Supreme Court, U.S.
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011009 DEC 31 2001

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2001

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Robert May,
Petitioner

v.

Desiree Douglass,
Respondent

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On Motion For Discretionary Review
To The Supreme Court of the State of Washington

# PETITION FOR WRIT OF CERTIORARI

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102 pp

December 13, 2001

## QUESTIONS PRESENTED

### I. Introductory Statement

This case presents the issue of whether or not a state court may deny review of an order that indefinitely suspends the fundamental and protected liberty interests of a parent and child to the society and companionship of their family when that suspension was court initiated and based largely on the use of said courts' wide discretionary powers in parent-child matters.

This case present several corollary issues concerning the protection of fundamental liberty interests of family and parent-child-family relationships. Those corollary issues include: 10 does the discretionary suspension of parent-child-family liberty interests require the same heightened protections and standards required of a permanent liberty deprivation (termination of rights) action; 2) is a court-initiated discretionary action that fails to properly meet heightened substantive and procedural due process requirements of a parent-child-family liberty deprivation action ever subject to *res judicata* and finality of decision doctrine; and 3) is a state court initiated discretionary action that deprives a parent and child of their family liberty interests without the requirements of heightened substantive and procedural due process required by the Due Process Clause of the 14th Amendment that suspends void.

On May 19, 1997, Washington superior court family department heard an adequate cause threshold to modify a 1995 parenting plan matter. After a short but very spirited exchange, that court found the case to be a "high conflict case" and imposed the requirement on the instant petitioner to ensure a

guardian ad liter (GAL) appointed to the case was paid $1800 and presents the court with petitioner's documented progress in anger management before he might resume an impractical parenting plan residential schedule.

In December 1999, petitioner sought reinstatement of his parent-child liberty through petition to state superior court. On November 14, 2000, that court ordered the May 19, 1997 order modified for a five time. Petitioner filed an appeal and sought discretionary review of the void order. Though a protected fundamental family liberty that is protected by the 14th Amendment is at issue and a lower court dismissed the action that affects said substantial civil liberty, the Washington Court of Appeals and the Washington Supreme Court denied discretionary review to petitioner finding a lack of timeliness of appeal and the doctrine of "finality of decision" did not allow those courts discretion to review the May 19, 1997 order.

## II. Question Presented

(1) Was the decision by the Washington State Supreme Court and its lower courts not to afford petitioner a review of a family law court decision that indefinitely deprives petitioner the care, custody, and control of his youngest child without trial and without a formal termination/suspension hearing so violative of proper procedural and substantive due process under the 14th Amendment, the protections provided by 42 U.S.C. § 1983, and the protections of Washington State law that this Court should exercise its powers?

## PARTIES TO THIS PROCEEDING

The names of all parties to this proceeding are contained in the caption of this case. Petitioner is an individual, not a corporate entity.

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## OPINIONS BELOW

Order of the Supreme Court of Washington dated October 2, 2001 is set forth in Appendix; Ruling Denying Review of the Supreme Court of Washington dated July 26, 2001 is set forth in Appendix; Order Denying Motion To Modify of the Court of Appeals, Division 1, State of Washington dated May 9, 2001 is set forth in Appendix; the opinion of the Court of Appeals, Division 1, State of Washington is presented in Commissioner's Ruling Denying Discretionary Review and Denying Without Prejudice Respondent's Motion To Dismiss Appeal dated March 12, 2001 and is set forth in Appendix; Washington Superior Court Order Denying Relief To Father dated November 14, 2000 is set forth in Appendix; Washington Superior

Court Order on Family Law Motion dated May 19, 1997 is set forth in Appendix.

All other relevant opinions and orders of Superior Court of the State of Washington for King County, Seattle, Washington are set forth in Appendix. All opinions and orders in this case are unreported.

## STATEMENT OF JURISDICTION

The Supreme Court of the State of Washington entered its final judgment on October 2, 2001 denying review of its decision of July 26, 2001 affirming Washington Court of Appeals decisions denying discretionary review of May 19, 1997 superior court based upon interlocutory appeal of November 14, 2000 order. This court has jurisdiction to review this petition pursuant to 28 U.S.C. § 1257.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

(1) The Fourteenth Amendment of the United States Constitution provides:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

(2) The United States Code, 42 U.S.C. § 1983 (Civil action for deprivation of rights) provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

(3) Article 1, section 2 of the State of Washington Constitution provides:

> The Constitution of the United States is the supreme law of the land.

(4) Article 1, section 3 of the State of Washington Constitution provides:

> No person shall be deprived of life, liberty, or property without due process of law.

(5) RCW 26.09.260 (Modification of parenting plan or custody decree) provides:

> (1) Except as otherwise provided in subsections (4), (5), (6), (8), and (10) of this section, the court shall not modify a prior custody decree or a parenting plan unless it finds, upon the basis of facts that have arisen since the prior decree or plan or that were unknown to the court at the time of the prior decree or plan, that a substantial change has occurred in the circumstances of the child or the

nonmoving party and that the modification is in the best interest of the child and is necessary to serve the best interests of the child.
(2) In applying these standards, the court shall retain the residential schedule established by the decree or parenting plan unless:
(a) The parents agree to the modification;
(b) The child has been integrated into the family of the petitioner with the consent of the other parent in substantial deviation from the parenting plan;
(c) The child's present environment is detrimental to the child's physical, mental, or emotional health and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child; or
(d) The court has found the nonmoving parent in contempt of court at least twice within three years because the parent failed to comply with the residential time provisions in the court-ordered parenting plan, or the parent has been convicted of custodial interference in the first or second degree under RCW 9A.40.060 or 9A.40.070.
(3) A conviction of custodial interference in the first or second degree under RCW 9A.40.060 or 9A.40.070 shall constitute a substantial change of circumstances for the purposes of this section.
(4) The court may reduce or restrict contact between the child and the parent with whom the child does not reside a majority of the time if it finds that the reduction or restriction would serve and protect the best interests of the child using the criteria in RCW 26.09.191.
(5) The court may order adjustments to the residential aspects of a parenting plan upon a showing of a substantial change in circumstances of either parent or of the child, and without consideration of the factors set forth in subsection (2) of this section, if the proposed modification is

only a minor modification in the residential schedule that does not change the residence the child is scheduled to reside in the majority of the time and:
(a) Does not exceed twenty-four full days in a calendar year; or
(b) Is based on a change of residence of the parent with whom the child does not reside the majority of the time or an involuntary change in work schedule by a parent which makes the residential schedule in the parenting plan impractical to follow; or
(c) Does not result in a schedule that exceeds ninety overnights per year in total, if the court finds that, at the time the petition for modification is filed, the decree of dissolution or parenting plan does not provide reasonable time with the parent with whom the child does not reside a majority of the time, and further, the court finds that it is in the best interests of the child to increase residential time with the parent in excess of the residential time period in (a) of this subsection. However, any motion under this subsection (5)(c) is subject to the factors established in subsection (2) of this section if the party bringing the petition has previously been granted a modification under this same subsection within twenty-four months of the current motion. Relief granted under this section shall not be the sole basis for adjusting or modifying child support.
(6) The court may order adjustments to the residential aspects of a parenting plan pursuant to a proceeding to permit or restrain a relocation of the child. The person objecting to the relocation of the child or the relocating person's proposed revised residential schedule may file a petition to modify the parenting plan, including a change of the residence in which the child resides the majority of the time, without a showing of adequate

cause other than the proposed relocation itself. A hearing to determine adequate cause for modification shall not be required so long as the request for relocation of the child is being pursued. In making a determination of a modification pursuant to relocation of the child, the court shall first determine whether to permit or restrain the relocation of the child using the procedures and standards provided in RCW 26.09.405 through 26.09.560. Following that determination, the court shall determine what modification pursuant to relocation should be made, if any, to the parenting plan or custody order or visitation order.

(7) A parent with whom the child does not reside a majority of the time and whose residential time with the child is subject to limitations pursuant to RCW 26.09.191 (2) or (3) may not seek expansion of residential time under subsection (5) (c) of this section unless that parent demonstrates a substantial change in circumstances specifically related to the basis for the limitation.

(8) If a parent with whom the child does not reside a majority of the time voluntarily fails to exercise residential time for an extended period, that is, one year or longer, the court upon proper motion may make adjustments to the parenting plan in keeping with the best interests of the minor child.

(9) A parent with whom the child does not reside a majority of the time who is required by the existing parenting plan to complete evaluations, treatment, parenting, or other classes may not seek expansion of residential time under subsection (5)(c) of this section unless that parent has fully complied with such requirements.

(10) The court may order adjustments to any of the nonresidential aspects of a parenting plan upon a showing of a substantial change of circumstances of either parent or of a child, and the adjustment is

in the best interest of the child. Adjustments ordered under this section may be made without consideration of the factors set forth in subsection (2) of this section.

(11) If the court finds that a motion to modify a prior decree or parenting plan has been brought in bad faith, the court shall assess the attorney's fees and court costs of the nonmoving parent against the moving party.

(6) RCW 13.34.180 (Order terminating parent and child relationship—Petition—Filing - Allegations) provides:

(1) A petition seeking termination of a parent and child relationship may be filed in juvenile court by any party to the dependency proceedings concerning that child. Such petition shall conform to the requirements of RCW 13.34.040, shall be served upon the parties as provided in RCW 13.34.070(8), and shall allege all of the following unless subsection (2) or (3) of this section applies:

(a) That the child has been found to be a dependent child;

(b) That the court has entered a disposition order pursuant to RCW 13.34.130;

(c) That the child has been removed or will, at the time of the hearing, have been removed from the custody of the parent for a period of at least six months pursuant to a finding of dependency; and

[* * * RCW 13.34.180(1)(d)-(f) and (2) OMITTED * * *]

(f) That continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home.

(2) In lieu of the allegations in subsection (1) of this section, the petition may allege that the child was

found under such circumstances that the whereabouts of the child's parent are unknown and no person has acknowledged paternity or maternity and requested custody of the child within two months after the child was found.

[* * * RCW 13.34.180 (3) OMITTED * * * ]

(4) Notice of rights shall be served upon the parent, guardian, or legal custodian with the petition and shall be in substantially the following form:

"NOTICE"

A petition for termination of parental rights has been filed against you. You have important legal rights and you must take steps to protect your interests. This petition could result in permanent loss of your parental rights.

1. You have the right to a fact-finding hearing before a judge.

2. You have the right to have a lawyer represent you at the hearing. A lawyer can look at the files in your case, talk to the department of social and health services and other agencies, tell you about the law, help you understand your rights, and help you at hearings. If you cannot afford a lawyer, the court will appoint one to represent you. To get a court-appointed lawyer you must contact: (explain local procedure) .

3. At the hearing, you have the right to speak on your own behalf, to introduce evidence, to examine witnesses, and to receive a decision based solely on the evidence presented to the judge.

You should be present at this hearing.

You may call (insert agency) for more information about your child. The agency's name and telephone number are (insert name and telephone number) ."

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On Motion For Discretionary Review
To The Supreme Court of the State of Washington

# PETITION FOR WRIT OF CERTIORARI

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## STATEMENT OF THE CASE

(1). Introduction. Dominick May-Douglass (Dominick) was born out-of-wedlock to Robert May (petitioner) and Desiree Douglass (respondent) on June 22, 1993. Robert May established paternity of Dominick in accordance with Washington law on September 14, 1993. Petitioner and respondent filed separate actions to establish a parenting plan in June 1994 and October 1994.

Those cases were consolidated in March 1995 under a paternity action suit. On September 19, 1995, Superior Court of Washington, Seattle, King County, Washington (superior court) issued, *inter alia*, Parenting Plan Order for Dominick under the earlier filed action. *See May v. Douglass*, Parenting Plan Final Order, Washington Superior Court No. 94-04567-2 (Sept 19, 1995, unpublished)/Appendix A24-A40. On September 27, 1995, superior court issued its order and judgment establishing paternity under the later filed case number. *See Douglass v. May*, Judgment and Order Determining Parentage and Granting Additional Relief, Washington Superior Court No. 94-04567-2 (Sept 19, 1995, unpublished).

In November 1996, Robert May, at the time the single custodial parent three minor children, accepted employment with an Oregon firm. He moved, with his three minor children and one adult 18 year old, to Tigard, Oregon. In January 1997, in accordance Revised Code of Washington (RCW) 26.09.260, petitioner Robert May filed a petition to modify 1995 Parenting Plan for Dominick. RCW 26.09.260 (5) states:

> The court may order adjustments to the residential aspects of a parenting plan upon a showing of a substantial change in circumstances of either parent or of the child, and without consideration of

the factors set forth in subsection (2) of this section, if the proposed modification is only a minor modification in the residential schedule that does not change the residence the child is scheduled to reside in the majority of the time:
(a) Does not exceed twenty-four full days in a calendar year; or
(b) Is based on a change of residence of the parent with whom the child does not reside the majority of the time or an involuntary change in work schedule by a parent which makes the residential schedule in the parenting plan impractical to follow . . . ."

(2). May 19, 1997 Adequate Cause Threshold Hearing and June 20, 1997 Revision Hearing. In accordance with Washington law, judicial procedures, and the Order of Domestic Case Schedule, a parent plan modification Adequate Cause Threshold hearing for was held before the Washington superior court family law department on May 19, 1997. After denying both parties' petitions for modification of parenting plan, *inter alia*, that family law court, on its own motion relying on Washington "high conflict case" law and its wide discretionary powers in family law matters, modified the parenting plan by suspended petitioner's parental rights and Dominick's family rights to his father and his siblings. *See Douglass and May*, Order on Family Law Motion, Washington Superior Court Nos. 94-3-04567-2 SEA/94-5-03704-9 SEA (May 19, 1997, unpublished)/Appendix p. A21-A23.

That court determined the protracted litigation over the parenting plan for Dominick met the "high conflict case" profile under *In re Marriage of Giordano* and *In re Marriage of Lilly*. *Id.* at p. 3/Appendix p. A23

> Finding a "high conflict case" in *In re Marriage of Giordano*, finding a party intransigent concerning a court decree, superior court placed a moratorium

on a party's access to court to ensure the party "did not waste additional judicial resources." The decision was affirmed as to the moratorium on access to the state court. *In re Marriage of Giordano*, 57 Wash.App. 74, 787 P.2d 51 (1990).

Finding the noncustodial parent intransigent over the matter of attorney fees awarded under a parenting plan in *In re Marriage of Lilly*, superior court awarded attorney fees in favor of the custodial parent. *In re Marriage of Lilly*, 75 Wash.App. 715, 880 P.2d 40 (1994).

Finding this case met the "high conflict case" profile and apparently relying upon a case of first impression, the *Kirshenbaum v. Kirshenbaum* case, the 1997 family law court used its wide discretionary powers to suspend residential schedule of parent and child. The court required petitioner to ensure the GAL appointment of Caroline Davis due to her "special expertise" and pay the GAL retainer fee of $1800. The suspension, the requirement to pay the retainer fee of $1800 instead of $200 per party ($400 total), and the requirement that petitioner be solely responsible for payment of retainer though that court admits it did not have a "financial declaration to show [petitioner or respondent] inability to pay fees" are all modifications to the 1995 trial-court ordered parenting plan. *See May v. Douglass*, Parenting Plan Final Order, Superior Court Case 94-3-04567-2 (Sept 1995)/Appendix A24-A40 and *Douglass v. May*, Judgment and Order Determining Parentage and Granting Additional Relief, Superior Court Case 94-5-03704-9 (Sept 1995)/Appendix A45-A52 at A40.

In *Kirshenbaum v. Kirshenbaum*, the Washington Court of Appeals affirmed a superior court decision to suspend noncustodial parent's residential

schedule to allow a "private practitioner to oversee the performance of the parenting plan or make alterations" and found it was not an abuse of discretion. In that case that court pointed out the "court retained ultimate authority to review." *Kirshenbaum v. Kirshenbaum*, Wash.App. 799, 929 P.2d 1204 (1997)

Petitioner filed a revision (reconsideration) motion to superior court. On June 20, 1997, superior court heard the revision motion and affirmed the May 19, 1997 order suspending parent-child-family liberty interests of petitioner and his youngest child. *See Douglass v. May*, Order on Civil Motion, Washington Superior Court No. 94-5-03704-9 (June 20, 1997, unpublished)/Appendix p. A20.

(3). First Court of Appeals action and subsequent 1997 superior court action. In August 1997, while appeals on the May 19, 1997 decision are pending, respondent again petitioned that court for a modification of the parenting plan order to renew her request to move to California without GAL recommendation. Petitioner joined in the renewed modification request and sought reinstatement of his parent-child-family liberty interests and a modification of the parenting plan.

Family Law Court (presided by Superior Court Judge DuBuque) granted respondent's modification of the parenting plan order to allow her to move to California without a GAL recommendation, yet denied reinstatement and modification to petitioner stating it did not have the authority to overrule the June 20, 1997 superior order affirming the May 19, 1997 order.

In post-decision argument, petitioner further pleaded that Judge DuBuque was a superior court judge and could reconsider the May 19, 1997 order as she had just modified the May 19, 1997 order by allowing respondent's modification request that had been

denied by the May 19, 1997 order affirmed June 20, 1997. Petitioner pointed out that respondent was restrained from moving by order of 1995 trial-court; and her residential move required recommendation of GAL per parenting plan order. In the trial court findings of fact and the parenting plan, 1995 trial court clearly restrains respondent's ability to make household moves. Respondent has a remarkable history of unrestrained residential moves. The Findings of Fact and Conclusions of Law in part reads:

> *"[Desiree Douglass'] proposed provision permitting her to move out of the area without a court order or mutual written agreement is not approved but a preference shall be given to the parameters set forth in her parent plan, which are based on the recommendation of the guardian ad litem when determining the visitation for a move from the area."* *Douglass v. May*, Findings of Fact and Conclusions of Law, Washington Superior Court No.94-5-03704-9 (Sep 19, 1995, unpublished) /Appendix p. A-52-A59 at A55; *see May v. Douglass*, Parenting Plan Final Order, *supra* at p. A36.

That August 1997 court denied petitioner's modification and reinstatement of parent-family liberty rights request. Petitioner appealed that decision under the same appellate case then pending before the Court of Appeals.

Though petitioner submitted two appellant briefs to the Court of Appeals, each was returned for over length. Thereafter, pro se petitioner failed to perfect his appeals due, among other reasons, to his ill health and surgery occurring in July 1998. The Court of Appeals dismissed the matter in August 1998.

(4). 1999-2000 Court Actions to Reinstate Parent-Child-Family Liberty Interest. In November 1999, respondent applied to court to move to Austin, Texas. In December 1999, petitioner and again filed a

petitioner to modify parenting plan and reinstate his and his youngest child's residential schedule. This request was based upon the assumption the May 19, 1997 order is void; upon respondent's third petition to modify parenting plan and be allowed to move to Texas; and the resignation of the GAL six months earlier. Dominick has been unable to visit his older brother Albert May (now age 15 years), who lives with his father, and his father since May 19, 1997.

In January 2000, superior court family law department reviewed petitioner's petition and respondent's modification motion, again without GAL recommendation. That court granted respondent's request to move to Texas (Respondent's fifth of six interstate moves and ninth residential move since Dominick's birth six years earlier). *See May v. Douglass*, Order on Family Law Motion, Washington Superior Court No.94-5-03704-9 (Jan 28, 2000, unpublished)/Appendix p. A-17-A19. That court again denied petitioner's motion to reinstate residential schedule citing, *inter alia*, a lack of evidence to support reinstatement because of the lack of a GAL. That court ratified the withdrawal of the case's second GAL Caroline Davis, who resigned without notifying petitioner in May 1999 to be a Court Appointed Special Advocate, and ordered petitioner to seek, hire and pay for the cases third GAL before it would reconsider reinstating he and his child's residential schedule (parent-child-family liberty interest protected by U.S.C.A. Const.Amend. 14).

Consistent with the earlier rulings of the 1997 family law courts, the January 2000 court opined without the guardian ad litem, it did not have sufficient evidence to allow the reinstatement of petitioner May's parenting plan and lacked the authority to overturn the May 19, 1997 order affirmed June 20, 1997.

Petitioner May filed revision motion. On February 25, 2000, Superior Court affirmed yet modified

January 2000 order. That court's modification, at the respondent's request, was to strike the only GAL candidate on the January 2000 order to accept the GAL position. All other candidates provided by the January 2000 court except Michael Louden had declined the GAL position by February 15, 2000. (Joan Ward declined the appointment about February 12, 2000. Joan Ward was subsequently appointed GAL on June 30, 2000 and resigned on July 30, 2000.) That court ordered petitioner to return to Commissioner Bradburn-Johnson of family law court to get another GAL list.

Based upon the failed GAL candidate selection process, *inter alia*, petitioner sought reconsideration of the February 25, 2000 order that continued the deprivation of his parent-child-family liberties without a procedurally proper hearing and without allowing proper due process. On March 23, 2000, superior court again denied petitioner's motion for reconsideration. That court then divested itself of jurisdiction over the matter it had affirmed on June 20, 1997. Oddly, that court ordered, *"the Court divests itself of any remaining jurisdiction over this case and directs any further proceedings in this case to be handled on the Family Law motions calendar." May v. Douglass*, Order Denying Motion For Reconsideration, Superior Court Case Number 94-5-03704-9 SEA (March 23, 2000, unpublished).

As the petitioner's case schedule (Order for Schedule of Domestic Schedule for Modification) remained intact and the trial for the petition to reinstate his parental liberty and modify the parenting plan remain scheduled for November 2000, petitioner did not seek an interlocutory appeal of the decisions. He fully expected to have all unresolved matters reviewed and adjudicated in trial before superior court.

In June 2000, family law court appointed Joan Ward as case's third GAL over petitioner's objection. Joan

Ward resigned as GAL in July 2000 stating she had a conflict of interest. Respondent then through court action opposed appointed of petitioner selected GAL candidate.

Petitioner failed to meet the modification case schedule because of the GAL appointment problems among issues pressed by the court. In August 2000, a court-appointed Master dismissed the modification petition and case for failure to keep schedule. Again, petitioner filed revision to superior court based upon the failed GAL appointment. Petitioner's case schedule was reinstated.

Respondent sought reconsideration of the reinstatement. Superior Court reconsidered its August 2000 decision on November 14, 2000.

On November 14, 2000, acting upon respondent's motion for reconsideration of ruling reinstating the petitioner's case schedule order, Washington Superior Court issued an order that denied petitioner's Washington Superior Rule 60 motion for review of the May 19, 1997 order affirmed June 20, 1997.

(5). November 14, 2000 Superior Court Order. The November 14, 2000 court, among its actions, refused to have a hearing on the matter of the reinstatement of residential schedule. That court continued the deprivation of father-child-family 14th Amendment protected liberty interests, dismissed with prejudice petitioner's petition to reinstate and modify his residential schedule though mandated by Washington statute. *See* RCW 26.09.260.

Petitioner based all reinstatement of residential schedule (deprivation of parental liberty interest actions) on CR 60 and the violations of 14th Amendment Due Process protections required before the state may initiate a deprivation of parent-family liberty interest. Petitioner presented his CR 60 motions on the following premises:

(a). The May 19, 1997 court lacked authority and subject matter jurisdiction on the issue of parent-child-family liberty deprivation of petitioner and child's family;
(b). The superior court (State) initiated action did not provide petitioner (or respondent) proper and required notice of the family-parental liberty deprivation (suspension) hearing; and therefore the May 19, 1997 court failed to comport with proper and accepted judicial procedures. Accordingly, that court lacked personal jurisdiction over the parties concerning the liberty deprivation subject matter (Note: the May 19, 1997 court dismissed petitioner May's motion for contempt of court against respondent for failure of proper procedural notice *viz.*, petitioner failed to file an Order To Show Cause Notice Hearing as is required of the state in a parent-child rights deprivation hearing);
(c). The May 19, 1997 court failed to provide petitioner proper procedural and substance due a required by Washington State law, the U.S. Constitution 14th Amendment, and 42 U.S.C. § 1983 *viz.*, "a parental rights deprivation hearing using the "clear, convincing, and cogent" evidentiary standard required by law to meet substantive Due Process requirements the United States Supreme Constitution, federal law, Washington Constitution and Washington law;
(d). As the original court that issued the May 19, 1997 liberty deprivation order did not have proper jurisdiction; failed to comport with proper and accepted judicial procedures; failed to provide petitioner and his children with required proper substantive and procedural due process pursuant to the Washington Constitution and the U.S. Constitution 14th Amendment Due Process Clauses, *inter alia*; prior to suspending (depriving) parent-family liberty, the May 19, 1997 order and

all subsequent superior court orders modifying said order are void or voidable on their face.

The November 14, 2000 court denied petitioner's CR 60 motion and dismissed with prejudice petitioner's action to reinstate his parent-family liberties deprived by discretionary decisions at court (state)-initiated action since May 19, 1997.

Based upon the November 14, 2000 court's order that again orders modified the May 19, 1997 order concerning the guardian ad litem requirement; its denial of reinstatement of petitioner May's parenting plan suspended by the May 19, 1997 court; its denial of review of the May 19, 1997 order and subsequent orders, petitioner May again appealed to the Washington Court of Appeals and sought an interlocutory review of the May 19, 1997 order via the discretionary review process.

(6). 2001 Washington State Court Of Appeals' Decisions. After a hearing with oral arguments, the Washington Court of Appeals, denied petitioner's Motion for Discretionary Review. In the Court of Appeals' decision "Commissioner's Ruling Denying Discretionary Review and Denying Without Prejudice Respondent's Motion To Dismiss Appeal" that court held that the doctrine of "finality of decision" and timeliness of application of review would not allow review of the May 19, 1997 superior court order. *See May v. Douglass*, Commissioner's Ruling Denying Discretionary Review and Denying Without Prejudice Respondent's Motion To Dismiss Appeal, Washington Court of Appeals No. 47843-5-I (March 12, 2001, unpublished) /Appendix p. A7-A10. The Court of Appeals affirmed its denial of discretionary review of the May 19, 1997 on May 9, 2001. *See May v. Douglass*, Order Denying Motion To Modify, Washington Court of Appeals No. 47843-5-I (March 12, 2001, unpublished) /Appendix p. A6.

Petitioner appealed to the Washington Supreme Court.

(7). 2001 Washington State Supreme Court's Decisions. After a hearing with oral arguments before a Supreme Court Commissioner on the decision by the Court of Appeals not to accept discretionary review of the May 19, 1997 order, the Washington Supreme Court affirmed the Court of Appeals decision not to accepted discretionary review of the May 19, 1997 order and judicial proceeding. *See May v. Douglass*, Ruling Denying Review, Washington Supreme Court No. 71145-3 (July 26, 2001, unpublished) /Appendix p. A4. A panel of the Washington Supreme Court affirmed the commissioner's decision denying discretionary review on October 2, 2001. *See May v. Douglass*, Order, Washington Supreme Court No. 71145-3 (Oct 2, 2001, unpublished)/Appendix p. A3.

ARGUMENT

WAS THE DECISION BY THE WASHINGTON STATE SUPREME COURT AND ITS LOWER COURTS NOT TO AFFORD PETITIONER A REVIEW OF A FAMILY LAW COURT DECISION THAT INDEFINITELY DEPRIVES PETITIONER THE CARE, CUSTODY, AND CONTROL OF HIS YOUNGEST CHILD WITHOUT TRIAL AND WITHOUT A FORMAL SUSPENSION/LIBERTY DEPRIVATION HEARING SO VIOLATIVE OF PROPER PROCEDURAL AND SUBSTANTIVE DUE PROCESS REQUIRED BY THE 14TH AMENDMENT, THE FEDERAL LAW (42 U.S.C. § 1983), AND THE WASHINGTON STATE CONSTITUTION THAT THIS COURT SHOULD EXERCISE ITS POWERS?

Yes. The Supreme Court and its lower courts have a nondiscretionary duty to review an order that deprives an individual of an established protected 14th Amendment liberty interest particularly when that

deprivation was accomplished without proper procedural due process.

The Fourteenth Amendment does not protect against all deprivations of liberty, "only against deprivations of liberty accomplished 'without due process of law.' " *Baker v. McCollan*, 443 U.S. 137, 145, 99 S.Ct. 2689, 2695, 61 L.Ed.2D 433 (1979). Parental rights have been categorized as a "liberty" protected by the due process clause of the Fourteenth Amendment. *Meyer v. Nebraska*, 262 U.S. 390, 399, 43 S.Ct. 625, 626, 67 L.Ed. 1042, 29 A.L.R. (1923); *In re Akers*, 22 Wash.App. 749, 753, 592 P.2d 647 (1970); *In re Marriage of Ebbighausen*, Wash.App. 708 P.2d 1220 (1985).

The state court relied upon the wrong standard and its discretionary powers to improperly deprive petitioner and his child of their family liberties. This Court requires proper due be afforded every individual before the state may interfere with this liberty. For the state court to deprive petitioner of his parental liberty, it must have used the "clear, convincing, and cogent standard" ratified by the *Santosky v. Kramer* case.

> "Process is constitutionally due a natural parent at a state initiated parental rights termination proceeding. * * * (a) fundamental liberty interest of the natural parent in the care, custody, and management of [his] child is protected by the Fourteenth Amendment * * *." *See Santosky v. Kramer*, 455 U.S. 745, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982).

Petitioner established his parental rights to his youngest son in accordance with Washington law in September 1993 by Affidavit of Paternity. The state court ratified that natural parental liberty and right with its September 27, 1995 order establishing paternity. *Douglass v. May*, Judgment and Order

Determining Parentage and Granting Additional Relief, Superior Court Case 94-5-03704-9 (Sept 1995)/Appendix A45-A52. The state established a parenting plan on September 19, 1995 to allow petitioner to enforce his natural and established parental liberty. *May v. Douglass*, Parenting Plan Final Order, Superior Court Case 94-3-04567-2 (Sept 1995)/Appendix A24-A40. Having met the burden of establishing a protected right, the court must apply the appropriate substantive due process standard to deprive petitioner of that right.

> If the plaintiff meets this burden then the officials must prove that "their conduct was reasonable under the applicable standards even though it might have violated the plaintiff's constitutional rights." *Benigni v. City of Hemet*, 879 F.2d 473, 480 (9th Cir. 1998).

Here, there are no allegations of child abuse and there are no allegations of risk to the child. There was no balancing of the "best interest of the child" to make the deprivation decision. *See Douglass v. May*, Order on Family Law Motion, Superior Court 94-3-04567-2 SEA/94-5-03704-9 SEA (May 1997)/Appendix A21-A23. The state court cannot claim it is balancing a state interest against individual rights. Unlike *Baker v. Racansky* , the state court may not rely on the notion its action "involves the difficult balancing of a family's right to autonomy against the state's interest in protecting minor children from abuse." *But see Baker v. Racansky*, 887 F.2d 183, 187 (9th Cir. 1989); *Devereaux v. Perez*, 218 F.3d 1045 (9TH Cir. 2000).

The state courts never reached the threshold for balancing its interest against the petitioner-child's interest because the state courts because it failed to meet substantive due process requirements. Again, the state failed to provide all parties including the

appointed GAL procedurally proper and adequate notice of a parent-child rights deprivation hearing; never proper obtained subject matter jurisdiction; and failed to gain proper personal jurisdiction over the parties.

There exists absolutely no "clear, cogent, and convincing" evidence required by the United States Supreme that would allow the state court initiated action that deprived petitioner of his parental rights. There was no evidence presented at the May 19, 1997 forum.

The May 19, 1995 hearing was not the proper forum for a deprivation of parental rights hearing. It was a modification of parenting plan threshold hearing scheduled by petitioner. The court gave no notice it was contemplating the deprivation action it initiated at its discretion. That court ostensibly used its discretionary powers to coerce enforcement of a clearly flawed and impractical parenting plan at the expense of the liberties of parent, child and their family. The May 19, 1997 order and all subsequent orders enforcing the parent-child-family liberty deprivation are void. CR 60 allows party to vacate a void judgment and order.

> When a judgment is void, the trial court has a nondiscretionary duty to grant relief. *Kennedy v. Sundown Speed Marine, Inc.*, 97 Wash.2d 544, 549, 647 P.2d 30 (Utter, J., dissenting), cert. denied, 459 U.SU. 1037, 103 S.Ct.449, 74 L.Ed.2d 603 (1982); *In re Marriage of Maxfield*, 47 Wash.App. 699, 703, 737 P.2d 671(1987 ); *Brickum Inv. Co. v. Vernham Corp.*, 46 Wash.App. 517, 520, 731 P.2d 533 (1987). The state courts have a nondiscretionary duty to review the decision upon application by the injured parties. Void orders and judgments may be vacated irrespective of lapse of time. *John Hancock Mut. Life Ins. Co. v. Gooley*, 196 Wash. 357, 370, 83 P.2d 221,

118 A.LR. 1484 (1938); *In re Marriage of Hardt*, 39 Wash.App. 493, 496, 693 P.2d 1386 (1985).

> CR 60 provides: "Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:
>
> "(5) The judgment is void;"
>
> Individuals may maintain a civil rights action when the government deprives them of any rights, privileges, or immunities guaranteed by both the United States Constitution and federal laws. *See* 42 U.S.C. § 1983. This statute is designed to protect individuals from an abuse of state power by providing a cause of action against state and local officials who, acting within the scope of their duties, have deprived an individual of a cognizable federal right. *Devereaux v. Perez*, 218 F.3d 1045 (9TH Cir. 2000); *see Baker v. McCollan*, 443 U.S. 137, 140, 99 S.Ct. 2689, 2692, 61 L.Ed.2D 433 (1979).

Upon superior court's denial of review, the appellate courts are mandated to review a deprivation of liberty claim.

> Review of a denial of a CR 60(b) motion is generally limited to the propriety of the denial, and is not a review of the original judgment. *Bjurstrom v. Campbell*, 27 Wash.App. 449, 618 P.2d 533 (1980). However, if questions are raised concerning lack of trial court jurisdiction, these issues are resolved on appeal as justice may require. *State v. Santos*, 104

Wash.2d 142, 702 P.2d 1179 (1985).

> Choices about marriage, family life, and upbringing of children are among associational rights ranked as of basic importance in our society, rights sheltered by Fourteenth Amendment against State's unwarranted usurpation, disregard, or disrespect. U.S.C.A. Const.Amend. 14; *Washington v. Glucksberg*, 521 U.S. 702, 721-722, 117 S.Ct. 2258, 138 l.Ed.2d 772 (Jun 1978).

Petitioner and his child have been deprived of their parent-child-liberty liberty rights and the companionship and society of family nearly five years on the caprice (manifest abuse of discretion) of the Washington state courts. The abuse of discretion continues because Washington appellate courts refused to review clear procedural due process errors made in 1997 and by subsequent court actions. The lack of appellate review allows Washington superior court to 1997 exacerbate the due process errors through modifying the errors and continuing to enforce a decision that is void on its face.

Washington courts manifestly abuse its discretion using "high conflict" case law to overcome the necessary substantive and procedural Due Process Clause threshold to deprive a person of his parental liberty interests even temporarily and certainly, as in this case, indefinitely.

No matter how broad the state courts' discretionary powers may be in parenting plan cases, the 1997 family law court never reached the broad breath of substantive due process required to institute a proceeding that deprives, through indefinite suspension, a parent and his child of their 14th Amendment protected parental-child-familial rights.

Though the 1997 family law order gives reference to the concept of "clear, convincing, and cogent"

evidence, that evidence concerns whether not petitioner was required to give respondent formal written notice that he intended to extend his schedule to make-up for days lost due to respondent's vacation and business trips in accordance with the parent plan order. The statement had little to nothing to do with substantive due process.

As petitioner and his child have a substantial civil liberty at stake; because the November 14, 2000 court denied review of a void order on the basis of *res judicata*; and because that court dismissed petitioner's petition to reinstate and modify the 1995 parenting plan that has been constructively terminated, the appellate courts have a nondiscretionary mandate to review and tender judgment on this case.

The state courts denial review of the May 19, 1997 order as being "untimely" implies that petitioner is issue and claim precluded from seeking to reinstate his parental liberty because of the passage of time.

The Washington state courts rely on the concepts of *res judicata* and "finality of decision" to suggest that its use if its discretion to remove a protection liberty without proper procedural due process cannot be reviewed. The notion of "untimely" infers that petitioner either does not have standing to argue his claims or the courts no longer have subject matter jurisdiction of his claims.

Because superior court did not ever use the proper due process required to suspend and thereby deprive petitioner and his youngest child of their family liberty protected by the 14th Amendment, the underlying May 19, 1997 order is void as a matter of law.

When a judgment is void, the trial court has a nondiscretionary duty to grant relief. *Kennedy v. Sundown Speed Marine, Inc., supra*; *In re Marriage of Maxfield, supra*; *Brickum Inv. Co. v. Vernham Corp., supra*. The state appellate courts have a nondiscretionary duty to review the decision upon

application by the injured parties. Void orders and judgments may be vacated irrespective of lapse of time. *John Hancock Mut. Life Ins. Co. v. Gooley, supra; In re Marriage of Hardt, supra.* A void order cannot be *res judicata* or a final judgment and order. The state appellate courts and its lower court may not summarily deny review of a temporarily deprived civil right based upon issue and claim preclusion. Obviously, if claim and issue are precluded from further adjudication, the parent-child liberty interest has been completely terminated without ant proper due process protection and without further recourse. The liberty interests of the petitioner and child hinge upon the requirement of the petitioner to engage and pay a GAL. Yet, the court has appointed four GALs in this case. Two of these appointments were opposed by respondent without good cause unnecessarily wasting additional judicial resources and precious parent-child residential time. Superior court, on its own motion, twice increased GAL retainer fees and imposed the fee on the petitioner as a sanction for being intransigent regarding this and related parenting plan impracticalities. The state appellate courts must take nondiscretionary review of cases of this nature that have become "high conflict" as a result of superior court "tweaking" and altering of parenting plan conditions.

In the alternative, petitioner has standing to bring his claim as he is not estopped by "untimeliness," *res judicata*, "finality of decision," or issue and claim preclusion. Respondent and superior court initiated actions involving the civil liberties of petitioner and his child. The respondent action and the court-initiated action conferred subject matter jurisdiction and standing on issues previously decided but now being modified. Superior court maintained subject matter jurisdiction through its *de facto* actions to modify the May 19, 1997 order through subsequent orders and by

denying a CR 60(b) and (c) review. It further opened the door by granting respondent two modifications to the impractical parenting plan order. Current superior court actions overcome any "finality of decision" notion any preclusion issues disguised as *res judicata* or even *stare decisis*.

Specifically, the November 14, 2000 superior court review and order directing the family law court commissioner to change the cure to the deprivation of petitioner and his child's liberties clearly allowed review of an the underlying order that is depriving petitioner and child of 14th Amendment protected rights. The November 14, 2000 court orders further change of the liberty deprivation conditions established by the May 19, 1997 order.

Here, the state courts deprivation of family liberty is a unlawful takings. Petitioner does not loose his right to review this takings as the government encroaches farther into his civil liberties with each passing year of deprivation. Restatement, Second Judgments provides clarification on the matters of jurisdiction and its effects on judgments.

> Superior court's modification of the May 19, 1997 order through its many (at least six modifying orders to date) grants petitioner standing for review and precludes the court from relying on "untimely" rationale to deny its subject matter jurisdiction. "Subject to limitations in § 74, a judgment may be set aside or modified if: (1) The judgment was subject to modification by its own terms or by applicable law, and events have occurred subsequent to the judgment that warrant modification of the contemplated kind; or (2) There has been such a substantial change in circumstances that giving continued effect to the judgment is unjust." Restatement, Second Judgments § 73.

Petitioner is always able to pursue a void or voidable order through a CR 60 action. CR 60(b)(5) and (c) motions are not precluded by time or one year proscription. And if they were, superior court re-opened the door to appellate review with its denial of the CR 60 motion.

The November 14, 2000 superior court order states the motion to vacate "*the Order on Family Law Motion dated May 19, 1997, brought pursuant to CR 60 were untimely and procedurally defective.*" Superior court denied review without reviewing the jurisdictional issue as to whether or not the May 19, 1997 order is defective for lack of subject matter jurisdiction (*ultra vires*).

As the subject matter jurisdiction and the validity of the May 19, 1997 order was before the state courts, petitioner has standing to argue subject matter jurisdiction even in the case of a final judgment. CR 60(b)(5), (6), and (11) and CR 60(c).

Inherent in the terms of November 14, 2000 court's order, is petitioner's right to appeal that court's decision and have review of its decision to deny review of May 19, 1997 order pursuant CR 60(b). Under CR 60(b)(5), (6), and (11) and CR 60(c), there is no proscription as to time for motion. CR 60(b)(5), (6), and (11) and CR 60(c).

The host of orders restraining and depriving petitioner and child of their family liberty protects no entities or persons justifiable interest. There was never a proceeding to determine the child best interest, the state overriding interest, the parties' interest balanced against a state interest or any other interest. Here, apparently the only interest at stake is the court's discretionary powers in such matters.

> "A judgment may be avoided in the circumstances stated in Restatement, Second Judgments § 12, except when relief should be denied in order to

protect a justifiable interest of reliance on judgment." Restatement, Second Judgments § 69.

"When a court has rendered a judgment in a contested action, the judgment precludes parties from litigating the question of the court's subject matter jurisdiction in subsequent litigation except if: (1) The subject matter of the action was so plainly beyond the court's jurisdiction that entertaining the action was a manifest abuse of authority . . . ." Restatement, Second Judgments § 12.

Because the state court initiated the deprivation action, it was required to use much more than its wide discretion. It is mandated to provide substantive and procedural due process in accordance with the Due Process Clauses of the state and federal constitutions.

Petitioner has standing to attack the underlying May 19, 1997 order because the issuing court did not have the power to entertain the controversy it initiated.

"Subject matter is a broad concept, one can only attack when the court has no power to entertain controversy, as when Constitution or legislature explicitly denies jurisdiction." *In re the Marriage of Major*, 859 P.2d 1262, 71 Wash.App. 531 (1993).

Federal and state constitutional Due Process Clauses, the Parenting Plan (law of the case), RCW 26.09, and RCW 13.34 precluded the May 19, 1997 Family Law Court from suspending petitioner's residential schedule and constructively terminating parental rights based solely on its discretion and misapplication of "high conflict" case law in conjunction with a dubious decision to enforce parenting plans through parental rights suspension as if the court may deprive any individual his civil rights

without and Order To Show Cause Hearing, substantive due process, and procedural due process. The Washington Supreme Court and its lower courts' denial of review based upon timelines is a clear error. The matters presented the court are presented timely. Petitioner is neither estopped nor precluded from pleading his case on the because of the notion of *res judicata*, finality of decision, or timeliness. Such concepts may not even be applicable in procedurally deficient civil liberty temporary deprivation cases based merely upon the concept that a court has wide discretionary powers. The court always remains open to review of its manifest abuses of discretion. There are few clearer places that a court may manifestly abuse its discretion than in the arena of civil liberties.

The civil liberty deprivation issues being appealed are timely because the court used its discretionary powers and not proper procedure to impose its restraints on father and children.

A review of the May 19, 1997 order is proper and timely without or without the interceding November 14, 2000 order because of the deprivation of parental-familial rights in violation of 14th Amendment protections afforded the petitioner. Because the November 14, 2000 order and court procedures used to tender that order fail based upon the original May 19, 1997 court errors, the matter of the review of procedures and the orders involved are proper.

Because of the nature and the continuing effects of the May 19, 1997 order on the petitioner, there are circumstances and issues for relief that overcome the timeliness proscriptions that are entrenched in the concepts of preclusion, *res judicata*, and finality of decision. The bases for review which overcome the timeliness rebuttal presumption include the following:

(A). Miscarriage of justice based upon unlawful and continuing suspension of father's residential

schedule. Grounds for relief are presented pursuant to Washington Rules of Appellate Procedure (RAP) 1.1(a), RAP 1.2(a), RAP 2.2(a)(3), RAP 2.2(a)(6), RAP (2.2(a)(9)-(10), RAP 2.3(a)-(b), RAP 18.8. Petitioner properly and timely seeks a Discretionary Review of the May 9, 1997 based upon the modifications to that order by superior court orders of November 11, 2000 and now February 27, 2001. Without a discretionary review of the May 19, 1997 the court will allow the continuance of a "gross miscarriage of justice" and the continuance of per se violations of Washington law through the continuing court actions of November 14, 2000 and January 12, 2001 (order promulgated February 27, 2001).

(B). The May 19, 1997 order does not provide finality of decision. Timeliness and the "desirability of finality of orders" are not the standard for acceptance of this discretionary review. Timeliness of the filing is not at issue because the request for discretionary review is based upon recent court orders modifying the May 19, 1997 for which the petitioner ultimately seeks discretionary review. This Motion for Discretionary Review is not filed "*anywhere from 11 months to nearly four years after the orders that he wishes reviewed.*" It is filed based upon a November 14, 2000 superior court order and now the February 27, 2001 superior court order and subsequent order modifying the May 19, 1997 order and unconstitutionally denying petitioner and his child their 14th Amendment rights and protections. Said recent orders modify the terms and requirements in the nearly four years old order that effectively and "constructively" terminated father's parental rights without any good cause showing or other safeguards of law. Because the court's continuing action in this case,

when viewed holistically and in totality upon all interrelated superior court orders, are continuing "manifest abuses of the court's powers," petitioner May maintains bases for relief via discretionary review.

(C). Extraordinary circumstances provide a basis for discretionary review. The appellate court may take discretionary review of the case based upon the extraordinary circumstances where "it serves the ends of justice." The 1997 court's finding remains based upon a lack of subject matter jurisdiction, improper evidence, for untenable reasons, and on unreasonable grounds when considering all the evidence.

(D). Modifications to May 19, 1997 order is a manifest abuse of the court's discretion. Though the basis for father's modification is a right firmly codified by Washington State statutory law, May 19, 1997 court denied both parties' petition for modification of parenting plan. Yet that court modified the parenting plan by effectively terminating both the parenting plan order and the father-child's parental-familial rights. The May 19, 1997 order required petitioner pay the entire GAL fee of $1800 thereby modifying the January 1997 GAL appointing order and September 1995 the trial-court parenting plan though parental rights and the GAL fee were not the matters before the court. That court did not have subject matter jurisdiction over parental rights or modification of a trial-court ordered parenting plan. The $1800 fee the court ordered the father to pay in order to resume any residential schedule to see his child was beyond that court's authority and is a procedurally improper modification of the parenting plan order. The denial of the parties' petition to

modify the 1995 parenting plan order contravenes and therefore subject matter jurisdiction. The 1997 court abused its discretion. The May 19, 1997 order is invalid and all subsequent orders including the November 14, 2000 order are fatally tainted by that order. This Court may review this case because the Washington state court actions unconstitutionally deprive father and son of protected rights.

## SUMMARY AND CONCLUSION

The Washington Supreme Court in refusing to allow discretionary review of an order that effectively indefinitely deprives petitioner of his 14th Amendment guaranteed liberty of parenting his youngest child has entered a decision that allows a superior court order to stand that is in conflict with a decision entered by the United States Supreme Court.

The May 19, 1997 court-initiated action depriving petitioner, his youngest child, and their family of family liberty and companionship is a deprivation of liberty on a par with an action to terminate parent-child rights through a dependency action. In this case aside from the non-mandated permanence, there is no difference for father and child than if their rights had been permanently deprived.

The underlying superior court order has so far departed from the accepted and usual course of judicial proceedings required to deprive an individual of natural parental rights, the order is void for failure to comport with proper procedural due process. Economy of judicial management and "high conflict case" profile does not grant the state the right to dispose of the heightened requirement of substantive due process to have "clear, convincing, and cogent " evidence", before the state can initiate the procedural

due process required to deprive and parent and child of their fundamental liberty interests.

Superior court cannot maintain a GAL in this case. It has imposed four GALs on the case and change the retainer fee requirements from $200.00 per party to $3000 the petitioner must pay before he has a chance at getting a recommendation to have is parental liberty rights in his youngest child restored.

The Washington Supreme Court, by its refusal to grant discretionary review, sanctions the departure by the lower court from the required heightened due process requirements necessary to deprive a parent and his child of their fundamental family liberty. Allowing the state courts to use their discretion in the way undermines the Due Process Clause of the United States Constitution and directly conflicts with the mandates of the United States Supreme on the matter of heighten liberty protection guarantees to the family, the parent, and his child.

As the Washington Supreme Court cannot find its way to protect the rights the petitioner through it supervisory powers of its lower courts, petitioners now seeks review by the United States Supreme Court and requests that the United States Supreme Court exercises its powers to protect the fundamental right of family and parent-child-sibling relationships.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2001

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Robert May,
Petitioner

v.

Desiree Douglass,
Respondent

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On Motion For Discretionary Review
To The Supreme Court of the State of Washington

# APPENDIX TO
# PETITION FOR WRIT OF CERTIORARI

Robert May
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Riddle, Oregon 97469
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*Petitioner Pro Se*

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THE SUPREME COURT OF WASHINGTON

| | | |
|---|---|---|
| Robert J. May, Petitioner, | ) | ORDER |
| v. | ) | No. 71145-3 |
| Desiree L. Douglass, Respondent. | ) | C/A No. 47843-5-1 |

Department I of the Court considered this matter at its October 2, 2001, Motion Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED:

That Petitioner's Motion to Modify Commissioner's Ruling is denied.

DATED at Olympia, Washington this 2nd day of October, 2001.

s/Gerry L. Alexander
CHIEF JUSTICE

THE SUPREME COURT OF WASHINGTON

| | |
|---|---|
| ROBERT JOSEPH MAY,<br><br>Petitioner,<br><br>v.<br><br>DESIREE LUANA DOUGLASS,<br><br>Respondent. | No. 71145-3<br><br>RULING DENYING REVIEW |

By a notice of appeal/notice for discretionary review filed December 15, 2000, and an amended notice filed February 8, 2001, Robert May sought review by the Court of Appeals of a series of superior court orders in his protracted battle with Desiree Douglass over custody, visitation, and support issues regarding their son. The challenged orders were entered on May 19, 1997; June 20, 1997; August 4, 1997; January 29, 200; February 25, 2000; March 23, 2000; November 14, 2000; January 3, 2001; and January 18, 2001. Court of Appeals Commissioner Kesler found the notices untimely as to all of the orders entered prior to November 14, 2000, and denied discretionary review of those orders on that basis. As to the later orders, which Mr. May purports to be

appealing, Commissioner Kesler denied without prejudice Ms. Douglass' motion to dismiss as frivolous. A Court of Appeals panel denied Mr. May's motion to modify Commissioner Kesler's ruling. Mr. May now moves for discretionary review by this court. RAP 13.5.

The Court of Appeals correctly concluded that Mr. May's notices came too late to seek review of the 1997 and early 2000 orders, *see* RAP 5.2(b), and that Mr. May had not shown grounds for an extension of time under RAP 18.8(b). There is thus no basis for this court to grant review under the criteria of RAP 13.5(b). moreover, the dispute between Mr. May and Ms. Douglass is the subject of continuing proceedings in the trial court, in addition to the still-pending appeal in the Court of Appeals from the November 14 and later orders. For this court to also become involved would impede rather than advance the ultimate resolution of that dispute.

The motion for discretionary review is denied. Ms. Douglass' request for sanctions can be addressed by the Court of Appeals as that court further considers the appeal.

s/Geoffrey Crooks
COMMISSIONER

July 26, 2001

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION ONE

| | | |
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| Robert Joseph May, | ) | |
| | ) | No. 47843-5-I |
| Petitioner, | ) | |
| | ) | ORDER DENYING |
| v. | ) | MOTION TO |
| | ) | MODIFY |
| | ) | |
| Desiree Luana Douglass, | ) | |
| Respondent. | ) | |

Petitioner has filed a motion to modify a commissioner's ruling denying a motion for discretionary review. A panel of this court has considered the matter pursuant to RAP 17.7 and has determined that the motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion to modify is denied.

Done this 9th day of May, 2001.

s/Becker, A.C. J

s/Agid, CJ

s/Coleman, J

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION ONE

| | | |
|---|---|---|
| Robert Joseph May, | ) | |
| | ) | |
| Petitioner, | ) | |
| | ) | No. 47843-5-I |
| v. | ) | |
| | ) | COMMISSIONER'S |
| Desiree Luana. Douglass, | ) | RULING DENYING |
| | ) | DISCRETIONARY |
| Respondent. | ) | REVIEW AND |
| | ) | DENYING WITHOUT |
| | ) | PREJUDICE |
| | ) | RESPONDENT'S |
| | ) | MOTION TO DISMISS |
| | ) | APPEAL |

Robert May seeks review of trial court orders entered over the past several years. May filed a combined notice of appeal/notice of discretionary review in the trial court and subsequently filed an amended notice of appeal/notice of discretionary review. Neither notice was filed within 30 days of the orders May wishes reviewed. They are therefore untimely. The motion for discretionary review is denied.
Douglass asks this court to dismiss the appeal and the discretionary review as frivolous. Although she may well be right, it is difficult to ascertain on the record before me at this point. The motion is best considered by the panel that considers this case of the merits. The motion to dismiss discretionary review is denied as moot. The motion to dismiss the appeal is denied without prejudice to raise the motion is respondent's brief.

FACTS

May and Desiree Douglass are the parents of a son born June 22, 19993. May and Douglass were not married and separated at some time after the child's birth. This action is a paternity action filed to settle issues of custody, visitation and support. May has always acknowledged paternity. The parties have been litigating this case since at least 1995. proceedings are ongoing in the superior court. Indeed, the parties argued this motion in the Court of Appeals on February 23, 2001, and intended to participate in superior court proceedings that same afternoon. Although his pleadings are confusing because they reference a multitude of orders entered in the superior court, may identifies six orders of the superior court that he contends warrant review: 1) order entered on May 19, 1997; 2) order on revision entered on June 20, 1997; 3) order entered on August 4, 1997; 4) order entered on August 4, 1997; 5) order on revision entered on February 25, 2000; and 6) order denying reconsideration entered on March 23, 2000.

On December 15, 2000, may filed a notice of appeal from a November 14, 2000, order combined with a notice of discretionary review of the May 19 and June 20, 1997, orders. On February 5, 2001, May filed an amended notice of appeal/discretionary review adding additional orders on appeal and adding the August 4, 1997, February 25, and March 23, 2000 orders to his notice of discretionary review.

DECISION

A party seeking discretionary review of a trial court decision must file a notice of discretionary review.[1] The notice of discretionary review must be filed in the trial court within 30 days after the court action to

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[1] RAP 5.1(a)

reviewed.[2] May filed his notice of discretionary review anywhere from 11 months to nearly four years after the orders that he wishes reviewed.

This court may waive the time limit for filing a notice of discretionary review.[3] Although the rules of appellate procedure are generally given a liberal interpretation, the rule permitting waiver of time for discretionary review is narrowly interpreted:

(b) Restrictions on Extension of Time. The appellate court will only in extraordinary circumstances and to prevent a gross miscarriage of justice extend the time within which a party must file a notice of appeal, a notice of discretionary review... The appellate court will ordinarily hold that the desirability of finality of decisions outweighs the privilege of a litigant to obtain an extension of time under this section. The motion to extend time is determined by the appellate court to which the untimely notice... is directed.[4]

This court has held that "extraordinary circumstances" refers to circumstances where the filing was delayed despite reasonable diligence and was the result of excusable error or circumstances beyond the party's control.[5] May does not allege any such diligence and indeed it is inconceivable that such lengthy delays could be excused.

Moreover, this is not the first time that May has brought some of these orders before this Court. In June 1997, he filed a notice of appeal and a notice of discretionary review from several orders.[6] That case

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[2] RAP 5.2(b)

[3] RAP 18.8

[5] Beckman v. DSHS, 102 WN App. 687, 694, P. 3rd review denied, Beckman v. DSHS, No. 70118-1 (Wash. October 11, 2000), citing Reichelt v. Raymark Indus., Inc. 52 WN. App., 763, 765-66, 764 P 2d 653 (1988) and Shumwat v. Payne, 136 WN. 2d 383, 394-97, 964 P 2d 349 (1998) (denying extension of time to file discretionary review.)

[6] May v. Douglass, COA no. 40873-9-1

was dismissed on June 26, 1998, when May failed to perfect the appeal despite numerous court's motions and hearings and commissioner orders. I can think of no reason that he is entitled to another review of the same order or orders.[7]

The motion for discretionary review is denied.

Now, therefore, it is hereby

ORDERED that the motion for discretionary review is denied; it is further

ORDERED that the motion to dismiss discretionary review is denied as moot; and, it is further

ORDERED that the motion to dismiss appeal is denied without prejudice to raise in respondent's brief.

Done this 12th day of March, 2001.

s/Julie Kesler
Court Commissioner

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[7] As in this case, May's citation to numerous orders made it difficult for the court to ascertain what he was asking this court to review

SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

DESIREE LUANA DOUGLASS
Natural Mother
Petitioner
and
DOMINICK EMIL MAY-DOUGLASS
vs.
ROBERT JOSEPH MAY
Presumed Father, Respondent

Case No. 94-5-03704-9-SEA

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ORDER DENYING RELIEF TO FATHER, DISMISSING PETITION, AND REFERRING MATTER TO COMMISSIONER FOR APPOINTMENT OF A NEW GAL.

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THIS MATTER having come on before the undersigned judicial officer of the above entitled court, the parties appearing in person or through their attorneys of record; and the court having heard argument concerning this matter, having been fully advised in the premises, now therefore it is

Found that there has been no substantial change in the circumstances of the child or non moving party, the mother. It is found that the parties anticipated the possibility of either party seeking to relocate and they set out procedures for notice and review by the court in that event. It is hereby ORDERED, ADJUDGED, AND DECREED that the father's Petition to Modify is dismissed with prejudice.

It is further found that the conditions necessary for the court to review the order of suspension, in particular, the court's order that the father pay the

advance retainer of the GAL so that the GAL investigate and report to court for the purpose of making a recommendation has not been met and there is insufficient evidence before the court on which to terminate the suspension. It is hereby ORDERED, ADJUDGED, AND DECREED that the father's motion to terminate the suspension is denied and that the father shall pay the advance retainer of the guardian ad litem as set forth by separate order of the court, and either party may request a review of the suspension after completion of the investigation and report to the court by the guardian ad litem.

The court finds there are insufficient facts to warrant a finding that there is an impermissible conflict of interest that would preclude Petitioner mother's attorney from acting as attorney of record for the Petitioner. ORDERED, ADJUDGED, AND DECREED that the motion to disqualify Andrekita Silva, as attorney of record is denied.

The court finds that the motions to vacate the Order of Protection dated October 3, 1996, the Order on Family Law Motion dated May 19, 1997, brought pursuant to CR60 were untimely and procedurally defective. Further, the father failed to provide an adequate defense on the merits. For all those reasons, the motions to vacate are denied.

The court denies the father's request for a declaratory judgment regarding any of the orders entered in this case as an action was not placed properly before the court and the relief would not terminate the dispute between the parties.
The court finds that all orders entered prior to December of 1999 met the requirements of due process and res judicata and not subject to review

with the exception that the order dated May 19, 1997 may be reviewed at such time as the conditions set out in the order are met, which are reiterated above, are met.

The court finds that there is not detriment to the Respondent Father regarding the untimely notice provided regarding the Petitioner's counter motion. All counter motions were in direct response to the Respondent Father's counter motions, and he received timely notice of the Petitioner's position in the Declarations and Legal Memorandum of Petitioner that were timely served on the Respondent. The court further finds that that service on the Petitioner of his additional requests for relief, including the Motion to Disqualify on October 27, 2000 for the November 3, 2000 hearing was not timely and did not provide adequate time for at the Petitioner to respond any earlier. It is in the interest of judicial economy for the encounter motion to be heard and the Declaration of Attorney of Record in Response to Motion to Disqualify to be admitted and considered for this hearing.

*The parties shall return to Commissioner Bradburn-Johnson as previously ordered by Judge Armstrong in her February 25, 2000 order, for the names of further potential GALs selected from the registry. Commissioner Bradburn-Johnson shall appoint the new GAL & set forth the GAL's duties and provisions for payment by separate order pursuant to RCW 26.26 and RCW 26.22.*

DATED this 14th day of November, 2000.

s/Steven Scott
Steven Scott, Judge

PRESENTED BY:
Law Office of Andrekita Silva

_____
Andrekita Silva, WSBA NO. 17314
Attorney for Petitioner, Mother, Desiree Douglass

COPY RECEIVED AND NOTICE OF PRESENTATION WAIVED:

_____
Robert J. May
Respondent Father, Pro Se

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

In re Parentage of Dominick May Douglass
Robert Joseph May,
Petitioner,

vs.

Desiree Luana Douglass,
Respondent.

No. 94-5-03704-9 SEA

ORDER DENYING MOTION FOR RECONSIDERATION

The above entitled Court, having heard a motion by Robert May for reconsideration of ruling of 2/25/00 and for motion to amend the court's order of 2/25/00, and the court having reviewed Robert May's motion and being fully apprised,

IT IS HEREBY ORDERED that 1) Robert May's motion for reconsideration is denied; 2) the remaining motions of Robert May set for 2/25/00 are denied; 3) the remaining motions of Robert May set for 3/17/00 are denied; 4) the Court divests itself of any remaining jurisdiction over this case and directs that any further proceedings in this case be handled on the Family Law motions calendar.

DATED this 23rd day of March 2000.

Judge s/ Sharon S. Armstrong
Sharon S. Armstrong

SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

In re
Robert Joseph May,
Petitioner,
vs.
Desiree Luana Douglass,
Respondent.

No. 94-5-03704-9 SEA

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ORDER ON CIVIL MOTION

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The above entitled Court, having heard a motion to modify the Commissioner's 1/28/00 order, and the court having considered all pleadings submitted by the parties, and having heard oral argument from both petitioner and respondent, both appearing via telephone
IT IS HEREBY ORDERED that the petitioner's motion for revision is denied. Commissioner Bradburn-Johnson's order of 1/28/00 is affirmed. The parties are also instructed that if the remaining potential GALs to decline to accept the case, Mr. May should return to Commissioner Bradburn-Johnson for the names of further potential GALs. It is also ordered that Michael Louden be stricken as a potential GAL for a conflict of interest.

DATED February 25, 2000.

s/Sharon S. Armstrong
Judge.

SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

| | |
|---|---|
| In re<br>Robert Joseph May,<br>Petitioner,<br>and<br>Desiree Luana Douglass,<br>Respondent. | No. 94-5-03704-9 SEA<br><br>Order on Family Law Motion |

THE ABOVE-ENTITLED COURT, HAVING HEARD A MOTION *see attached*

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DATE: January 28, 2000 s/Nancy Bradburn-Johnson
FAMILY LAW
COMMISSIONER

This matter having come before the court on Petitioner/Father's Motions for Restraining Order restraining Respondent/Mother from moving to Texas from California, to Reinstate Residential Schedule and Reinstate Temporary Visitation and To Adopt Father's Temporary Residential Schedule due to Mother's proposed move, and For Appointment of a Guardian Ad Litem; the parties both appearing pro se and personally before the court, and the court having reviewed the working papers submitted by the parties, including Mother's Reply and Counter-Motion For Relief and the court files and records herein; and having heard oral argument of the parties, and being fully advised in the premises and finding no just reason for delay does hereby enter the following:

IT IS HEREBY ORDERED

1) COMMISSIONER BONNIE CANADA-THURSTON rescues from this case.
2) The motion to restrain mother from moving to Texas from California is hereby denied;
3) The motion to reinstate residential provisions allowing father to have visitation of the Permanent Parenting Plan entered by Judge Sharon Armstrong on September 19, 1995 and which were suspended by Commissioner Kimberly Prochnau by Order entered on May 19, 1997 until father complied with the conditions set forth in the 1995 Parenting Plan is denied for insufficient evidence of proof of his compliance;
4) The motion to adopt Father's Temporary Parenting Plan is denied;
5) The motion to appoint a GAL from CASA is denied as CASA cannot be appointed in cases where the parties reside outside the State of Washington;

6) The motion to appoint a GAL to replace the withdrawal of Carolyn Davis is granted; the GAL shall be one of the following: Michael Louden (206-689-8586 (Attorney, $100/hr); Megan O'Brien-Stanley (206-521-9844)(Attorney $90/hr.); Joan Ward (206-440-1449)(MSW $95/hr.); or Joan Zegree (206-525-4775)(Attorney, $90/hr.). Father to contact and retain CAL per prior orders. GAL must sign a copy of this order indicating acceptance of CAL role and must file the order with the court (fees subject to change);
7) Father's oral motion to stay this order pending revision is denied; Mother answers in open court that she will not be moving from California within the next ten (10) days.

DONE IN OPEN COURT this 28th day of January, 2000.

s/Nancy Bradburn-Johnson
NANCY BRADBURN-JOHNSON, COMMISSIONER

Approved for entry: GAL Appointment
Accepted:
s/Robert J. May
Robert Joseph May, Father

Approved for entry:
s/Desiree Douglass
Desiree Luana Douglass, Mother

SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

Desiree Luana Douglass, mother
Plaintiff,
Dominick Emil May-Douglass, child

vs.

Robert Joseph May,
Defendant.

No. 94-5-03704-9

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ORDER ON CIVIL MOTION

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The above entitled Court, having heard a motion for revision of Commissioner Prochnau's order of 5/19/97, and finding no basis for revision
IT IS HEREBY ORDERED that Commissioner Prochnau's order of May 19, 1997 is affirmed.
DATED: June 20, 1997

s/Sharon S. Armstrong

JUDGE

Presented by:
s/Robert May

SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

Douglass, Desiree

May, Robert

94-5-03704-9 SEA
No. 94-3-04567-2 SEA

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ORDER ON FAMILY LAW MOTION

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The above entitled Court, having heard a motion by father to vacate previous orders, for major or minor modification, for contempt, mother's motions + court hearing [UNREADABLE] [UNREADABLE], considering all papers of parties and deeming it fully advised COURT RETAINS JURISDICTION for further hearing. (Father may move to reinstate visitation at such time as GAL interim report presented and provide documentation of progress with anger management) IT IS HEREBY ORDERED Father's Motion for Vacation of previous order per CR60 is denied—no legal basis is shown. Father has failed to meet the conditions for comply with September 1995 order and later orders requiring documented progress in therapy for anger control [UNREADABLE], he interfered and failed to cooperate in Common Ground visitation exchange

DATED 5/19/97

s/ Kimberly D. Prochnau
Judge/Court Commissioner

SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

Douglass, Desiree

May, Robert

94-5-03704-9 SEA
No. 94-3-04567-2 SEA

ORDER ON FAMILY LAW MOTION

to pay for GAL fees, but has not provided financial declaration to show his inability to pay fees (and has not paid support which further financial disadvantages mother's ability to litigate) (GAL appointed by Judge Johnson 1/14/97) Judge Armstrong found that a GAL was needed given father's abusive use of conflict, he has also returned child late.
IT IS HEREBY ORDERED father's motion for contempt is denied, father did not personally serve her with his motion and get an order to show cause. LR 94.04(i). Court further finds contempt re father's failure to return child on time; father has failed to show waiver by clear, cogent, convincing evidence.

DATED: 5/19/97

s/Kimberly Prochnau
Judge/Court Commissioner

SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

Douglass, Desiree

May, Robert

94-5-03704-9 SEA
No. 94-3-04567-2 SEA

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ORDER ON FAMILY LAW MOTION

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The above-entitled Court, Having heard a motion Court finds per In re Giordano and In re Lilly this is a high conflict case and requires case management. Father shall pay the mother's share of GAL retainer fees—her share of retainer shall be deduced from child support arrears. Until GAL appointed and review case and father provides documentation of substantial compliance with order of 9/95 regarding anger management.
IT IS HERBY ORDERED court suspends visitation. Court finds threshold has not been met—case schedule shall be cancelled. Court reaffirms appointment of Caroline Davies due to her special expertise. (Father failed to document financial inability). Retainer fees are (UNREADABLE] $1800 of on father may set off $900 against arrears.

DATED: 5/19/97

s/Kimberly Prochnau
Judge/Court Commissioner

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

In Re Custody of DOMINICK EMIL MAY-DOUGLASS
ROBERT JOSEPH MAY
Petitioner,

DESIREE LUANA DOUGLASS
Respondent.

No. 94-3-04567-2

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PARENTING PLAN
[x] FINAL ORDER
(PP)

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1.1. This parenting plan is:

the final parenting plan signed by the court pursuant to a an order of parentage entered on *September 19, 1995*.

## I. GENERAL INFORMATION

1.1. This parenting plan applies to the following child:

| Name | Birthdate |
|---|---|
| Dominick Emil May-Douglass | June 22, 1993 |

## II. BASIS FOR RESTRICTION

2.1. PARENTAL CONDUCT (RCW 26.09.191(1), (2).

The father's residential schedule time with the child shall be limited and mutual decision making and designation of a dispute resolution process other than court action shall not be required because this parent has engaged in conduct which follows.

a. Substantial refusal to perform parenting functions. Pursuant to 26.09.004(3) parenting functions include
   (1) - DELETED BY JUDGE ARMSTRONG 9/19/95 -
   (2) providing for financial support of the child.

2.2. OTHER FACTORS (RCW 26.09.191(3))

a. The father's conduct may have an adverse effect on the child's best interest because of the existence of the factors which follow.

   (1) The abusive use of conflict and intimidation by the parent which creates the danger of serious damage to the child's psychological development.

This factor serves as a current basis for restrictions with respect to decision making and dispute resolution and serve to limit the frequency of exchange of residential care.

III. RESIDENTIAL SCHEDULE

Dominick shall reside in the primary care of his mother. The following provisions set forth where Dominick shall reside each day of the year and what contact Dominick shall have with each parent. The following provisions may be adjusted mutual written agreement.

3.1. PRE-SCHOOL SCHEDULE

Dominick shall reside with the mother, except for the following days and times when Dominick will reside with or be with the father:

a. (1) Every *1st, 3rd and 5th* of each month from Friday at 4:00p.m.until Saturday 4:00 p.m.

(2) Every *2nd and 4th* Wednesday from 4:00 p.m. (or as soon thereafter as the father can pick Dominick up at day care until the next morning by 9:30 a.m. when the father delivers the child to day care or to the intermediary if there is no day care that day.

b. Eighteen months after entry of this permanent order, so long as the father shall have

(a) completed a parenting class,
(b) show documented progress in therapy for anger/control issues,
(c) and so long as the guardian ad litem recommends in writing

then Dominick shall reside with or be with the father as follows:

(1) Every *1st, 3rd and 5th* weekend of each month from Friday at 4:00 p.m. until Saturday 4:00 p.m.
(2) Every *2nd and 4th* Wednesday from 4:00 p.m. (or as soon thereafter as the father can pick Dominick up at day care until the next morning by 9:30 a.m. when the father delivers the child to day care or to the intermediary if there is no day care that day.

(3) Holidays as set forth in Schedule for Holidays at 3.7 and Special days as set forth in the Schedule for Special Days at paragraph 3.8.

c. For purposes of 3.1, the first weekend of the month shall be defined as a weekend in which both Friday and Saturday land in the new month.

3.2. SCHOOL SCHEDULE:

a. Upon enrollment in elementary school, Dominick shall reside with the mother, except for the following days and times when Dominick will reside with or be with the father so long as the father shall have

(a) complete a parenting class,
(b) show documented progress in therapy for anger/control issues,
(c) and so long as the guardian ad litem recommends in writing

then Dominick shall reside with or be with the father as follows:

(1) Every *1st, 3rd and 5th* weekend of each month from Friday at 4:00 p.m. (or as soon thereafter as the father can pick Dominick up at school or day care) until Sunday 4:00 p.m.
(2) Every *2nd and 4th* Wednesday from 4:00 p.m. (or as soon thereafter as the father can pick Dominick up at school or day care until the next morning by 9:30 a.m. when the father delivers the child to school.
(3) Holidays as set forth in Schedule for Holidays at 3.7 and Special days as set forth in the Schedule for Special Days at paragraph 3.8.below.

(4) Vacation time as set forth in Vacation with Parents
(4) Vacation time asset forth in Vacation with Parents at 3.6 below.

3.3. SCHEDULE FOR WINTER VACATION

Dominick shall reside with his mother except that upon enrollment in elementary school, so long as the father shall have

(a) completed a parenting class, .
(b) show documented progress in therapy for anger/control issues,
(c) and so long as the guardian ad litem recommends in writing

then Dominick shall reside as follows:
In even years he shall be with his mother for Winter Vacation and in the odd years he shall be with his father for Winter Vacation.
Winter vacation shall begin at 3:00 p.m. the day school is out and it shall end at 5:00 p.m. seven days later.

3.4. SCHEDULE FOR SPRING VACATION.

Dominick shall reside with his mother except that upon enrollment in elementary school, so long as the father shall have

(a) completed a parenting class,
(b) show documented progress in therapy for anger/ control issues,
(c) and so long as the guardian ad litem recommends in writing

then Dominick shall reside as follows:

In even years he shall be with his mother for Spring Vacation and in odd years he shall be with his father for Spring Vacation.

Spring vacation shall begin at 3:00 p.m. the day school is out and it shall end at 5:00 p.m. the day before school reconvenes.

3.5. SUMMER SCHEDULE.

Same as 3.1 and 3.2 except as follows:

a. Mother: The mother may exercise vacation as described in 3.6 during the summer.
b. Father: Father's vacation upon enrollment in elementary school by Dominick: So long as the father shall have

(a) completed a parenting class,
(b) show documented progress in therapy for anger/control issues,
(c) and so long as the guardian ad litem recommends in writing

then the father shall be entitled to the vacation time set forth in 3.6 below.
c. Vacation time exercised by either parent is subject to the additional conditions set forth in 3.6 below.

3.6. VACATION WITH PARENTS.

a. The schedule foe vacation with parents is as follows:

(1) Mother's vacation: In addition to Spring Vacation and Winter Vacation, the mother shall be entitled to four weeks of vacation with Dominick. The vacation time may be

taken in uninterrupted blocks. A block may not exceed three weeks.

(2) Father's vacation in addition to Spring Vacation and Winter Vacation: Upon enrollment in elementary school by Dominick: So long as the father shall have

(a) completed a parenting class,
(b) show documented progress in therapy for anger/control issues
(c) and so long as the guardian ad litem recommends in writing

then the father shall be entitled to two weeks of uninterrupted vacation time with Dominick.

(3) Father's vacation in addition to Spring Vacation and Winter Vacation: When Dominick turns age ten (10), so long as the father shall have

(a) completed a parenting class,
(b) show documented progress in therapy for anger/control issues,
(d) and so long as the guardian ad litem recommends in writing

then the father shall be entitled three weeks of uninterrupted vacation time with Dominick during the summer.

b. A parent's vacation is contingent upon at least 30 days written notice to the other parent. So long as timely notice is provided , in the event of a scheduling conflict over vacation time, the father shall have first choice in even years once he is entitled to exercise visitation and the mother will have first choice in odd years.

c. The vacation exercised by either parent pursuant to this section shall not displace any of the other parent's special days, and is inclusive of residential time and special days awarded to the parent exercising their vacation.
d. The parent exercising vacation time shall provide the other parent with a telephone and address where the child or other parent can be reached in the event of an emergency during the vacation.
e. Should the mother's exercise of vacation time displace the overnight residential time to which the father is entitled pursuant to this plan, the father shall be compensated for the displaced residential time upon the mother's return as follows:

(1) the father's next visit with Dominick shall be extended by a period of 24 hours each overnight visitation missed by the father as a result of the mother's vacation.

3.7. SCHDULE FOR HOLIDAYS.

a. Preschool schedule for holidays: The residential schedule for Dominick prior to Dominick beginning school shall be as set for at 3.1.
b. Holiday schedule after enrollment in elementary school: Upon enrollment in elementary school, the residential schedule for the holidays listed below is as follows:

| | Mother | Father |
|---|---|---|
| Easter- from 10:00 a.m. to 7:00 p.m. | Even | Odd |
| Thanksgiving Day from 10:00 a.m. to | | |

| | | |
|---|---|---|
| 7:00 p.m. | Odd | Even |
| Christmas Day | Odd | Even |

Christmas begins at noon December 24 and ends at 5:00 p.m. December 25

c. The parent seeking to exercise his or her residential time set forth in this section shall be responsible for the transportation each way.

3.8. SCHEDULE FOR SPECIAL OCCASIONS.

The residential schedule for Dominick for the following special occasions is as follows so long as the father shall have

(a) completed a parenting class
(b) show documented progress in therapy for anger/control
(c) and so long as the guardian ad litem recommends:

| | Mother | Father |
|---|---|---|
| Mother's Day | Every | _____ |
| Father's Day | _____ | Every |
| Albert May's birthday | _____ | Every |
| Michael's May's birthday | _____ | Every |
| Daniel May's birthday | _____ | Every |
| Desiree's birthday (June 20) | Every | _____ |
| Dominick's birthday | Odd | Even |
| Jedediah Douglass' birthday | Every | _____ |
| Robert J. May's birthday (September 10) | Every | _____ |
| Kimberly May's birthday | Every | _____ |

The above special days begin at 10:00 a.m. and end 7:00 p.m.

Notwithstanding the above, special days shall be exercised by the father only if the child listed above is a minor child residing in his primary residential care. If Father's Day falls on Dominick's birthday, Dominick will spend that day with the mother from 10:00 a.m. until 7:00 p.m.
If Father's Day falls on the mother's birthday, Dominick will spend that day with the mother from 10:00 a.m. until 7:00 p.m.
The parent seeking to exercise his or her residential time set forth in this section shall be responsible for the transportation each way.

3.9. PRIORTIES UNDER THE RESIDENTIAL SCHEDULE.

For purposes of this parenting plan the following days shall have priority:

Holidays, special occasions over the pre-school/school schedule and vacation schedule. Priorities may be adjusted upon mutual written agreement.

3.10. RESTRICTIONS

The following restrictions shall apply when Dominick spends time with either parent (see paragraph 2.1):

a. Neither parent shall speak in a disparaging manner about the other in the presence of Dominick.
b. Neither parent shall use physical punishment or physical discipline.

3.11. TRANSPORTATION ARRANGEMENTS.

Unless specified otherwise is another provision in this plan, transportation arrangements for

Dominick, other than costs, between parents shall be shared as follows:

a. So long as the day care is open or so long as it is a school day once Dominick is in school, the father shall pick up Dominick from the day care or school at the beginning of his visitation.
b. If day care or school is open at the end of the father's visit, then the father shall return Dominick to school or day care.
c. So long as a third party intermediary is required to facilitate visitation, *a* third party *professional* intermediary shall be selected and / or hired by the mother. Each party shall be responsible for their own transportation to the designated point of transition. The transition point or intermediary shall be Common Ground in Seattle, Washington unless a more convenient, less costly intermediary is selected or hired by the mother. Notice of any change in the intermediary shall be provided to the father in writing.
d. Except as set forth in a. and b. above in this section, whichever parent is to begin the exercise of their residential time under shall be responsible for transportation of Dominick.

3.12. OTHER:

3.13. DESIGNATION OF CUSTODIAN.

The child named in this parenting plan are scheduled to reside the majority of the time with the mother. This parent is designated the custodian of Dominick solely for purposes of all other state and federal statues which require a designation or determination of custody. This

designation shall not affect either parent's rights and responsibilities under this parenting plan.

IV. DECISION MAKING

4.1. Each parent shall make decisions regarding the day-to-day care and control of each child while the child is residing with that parent, except as provided below.

4.2. All major decisions regarding each child shall be made by the mother including but not limited to: Education decisions, decisions regarding Non-Emergency health care, whether Dominick can obtain a driver's license, join the military services prior to age 18, or marry prior to age 18.

4.3. RESTRICTIONS.

a. Sole decision making shall be ordered to the mother for the following reasons:

(1) One parent is opposed to mutual decisions making, and such opposition is reasonably based on the following criteria:

(a) The existence of a limitation under RCW 26.09.191;

V. DISPUTE RESOLUTION

No dispute resolution process, except court action, shall be ordered, because a limiting factor under 26.09.191 applies.

There has been the abusive use of conflict and the parties are not in equal bargaining positions so that neither counseling nor mediation would

be effective. The parties do not have the financial means to participate in arbitration.

## VI. OTHER PROVISIONS

There are the following other provisions:

1. ADJUSTMENTS IN SCHEDULE IN THE EVENT THE MOTHER MUST WORK OUT OF TOWN

   In the event the mother is called upon to work out of town on a temporary basis, with 10 days notice, the father's residential time may be displaced by the mother's absence. However, the father shall be compensated for all overnight residential time which is displaced. Such residential time to the father's next visit for each overnight visit missed by the father.

   Mother's out of town work schedule shall not be regarded as vacation time.

2. MOVE OF DOMINICK"S RESIDENCE: The mother may not move Dominick's residence in such a manner that the exercise of the father's visitation time becomes impracticable without prior order of the court or mutual written consent.

   In the event either parent changes his or her permanent residence so that exercise of the father's visitation becomes impracticable, the residential schedule shall be reviewed by the court. In that event:

   a. The parent moving must give the other parent and the guardian ad litem 45 days notice of his or her intent to move and the proposed location of the move, and the proposed residential schedule to be sought from the court.

b. Within 14 days, the parent receiving notice of a move as well as the guardian ad litem should respond to the other parent by either consenting, or by providing written objections and suggestions regarding an acceptable residential schedule or by providing written notice of lack of consent.

c. In the event no agreement is reached, the party wishing to have a new residential schedule approved by the court shall bring the matter before the Family Law Department for a motion and twenty (20) days notice of the hearing shall be provided to the other party and guardian ad litem.

In the event the move is permitted, if the move is out of state, when adopting a new residential schedule unless good reason exist otherwise, the court shall give a preference to the following:

(1) The father shall receive a minimum of

(a) 24 nights per year immediately after entry of this order but prior to an 18 month review
(b) 36 nights per year once the conditions set forth in 3.1.b. have been met but prior to Dominick being enrolled in elementary school;
(c) 42 nights per year once the conditions set forth in 3.2 have been met and Dominick is enrolled in elementary school; and

(2) Overnight holiday time provided pursuant to 3.7 of this parent plan shall remain effective.

(3) Non overnight holidays provided pursuant to 3.7 and special days provided pursuant to 3.8 of this parent plan shall remain effective so long as the father travels to the geographic area where the mother resides.

3. NO CONTACT BY PARTIES PENDING RECOMMENDATION BY G.A.L. Neither party shall have contact with one another either in person, by mail, by telephone, or though third parties except for the sole purpose of communicating with respect to Dominick's care or in event of emergencies, all communications should be through the mail. The no contact provisions should expire 18 months from entry of the permanent parent plan unless the guardian ad litem recommends otherwise in writing.
4. VISITATION TO BE FACILITATED THROUGH THIRD PARTY: Unless the guardian ad litem recommends otherwise in writing, all visitation pursuant to this parent plan should be facilitated through a third party for a period of 18 months after entry of this order. If the day care is open, then the transition for visitation shall occur at the day care with the mother not present.

   If the day care is not open, unless agreed upon otherwise in writing, the drop off and pick up location shall be at Common Ground unless another more convenient and less expensive intermediary is selected or hired by the mother.

   The cost of any third person assisting with visitation shall be paid pursuant to the Order of Support.

5. The father shall complete a parenting class and participate in treatment for anger and control issues.

6. A guardian ad litem shall continue to represent the interests of Dominick, pending the age of majority. The father shall provide a release of information to the guardian ad litem to monitor attendance, progress, and prognosis in therapy regarding any and all issues which impact the residential schedule so long as the guardian ad litem is appointed to represent the child's interests.
7. Neither parent shall speak in a disparaging manner about the other in the presence of Dominick.
8. Neither parent shall use physical punishment or physical discipline.
9. EMERGENCIES INVOLVING DOMINICK: In the event of a serious medical or health emergency involving Dominick, the parent having the care of Dominick at the time of the time of the emergency shall give the other parent notice within 2 hours or as soon as is possible, of the serious medical or health emergency.
10. NOTICE REQUIRED PRIOR TO REMOVAL FROM STATE: Neither parent shall remove Dominick from the State of Washington for vacation or visitation without giving 24 hours prior notice to the other parent of the intended destination.

## VIII. ORDER BY THE COURT

It is ordered, adjudged and decreed that the parenting plan set forth above is adopted and approved as an order of this court.

WARNING: Violation of residential provisions of this order with actual knowledge of its terms is punishable by contempt of the courts and may be a criminal offense under RCW 9A.40.070(2). Violation of this order may subject a violator to arrest.

When mutual decision making is designated but cannot be achieved, the parties shall make a good faith

effort to resolve the issue through the dispute resolution process.
If a parent fails to comply with a provision of this plan, the other parent's obligations under the plan are not affected.

DATED this 19th day of September, 1995.

s/ Sharon S Armstrong
Sharon Armstrong,
Judge

Presented by:
LAW OFFICES OF F. ANDREKITA SILVA

_____
Andrekita Silva, WSBA NO. 17314
Attorney for Petitioner

Copy received and
Notice of Presentation Waived by:

_____
Robert J. May
Respondent Pro Se

Copy received and
Notice of Presentation Waived by:

_____
Don Layton, M.S.W.
Guardian ad litem

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

| | |
|---|---|
| DESIREE LUANA DOUGLASS<br>Natural Mother,<br>Petitioner,<br>and<br>DOMINICK EMIL MAY-DOUGLASS<br>Child,<br>vs.<br><br>ROBERT JOSEPH MAY<br>Presumed Father,<br>Respondent. | )<br>)<br>) No. 94-5-03704-9<br>)<br>) ORDER APPOINTING<br>) GUARDIAN AD LITEM<br>)<br>)<br>)<br>)<br>) |

The Petitioner request an order maintaining the appointment of a guardian ad litem. It appears that good cause exists to maintain the appointment of Don J. Layton, as guardian ad litem for certain limited purposes, therefore,

IT IS ORDERED:

1. APPOINTMENT OF GUARDIAN AD LITEM.

   That Don J. Layton shall remain guardian ad litem for the minor child, Dominick Emil May-Douglass, for the limited purposes of making recommendations to the parties and to the court regarding issues that arise pursuant to the Parent Plan, Final Order.

2. TERMINATION OF APPOINTMENT.

   This appointment shall terminate upon the minor child reaching the age of *12 years*.

3. OTHER PROVISIONS.

   The undersigned guardian ad litem agrees to this appointment, understands the nature of this action accepts the following responsibilities:

(a) To protect the legal interests of the minor child through minority with respect to any issues that arise pertaining to the parent plan; and
(b) To explain to the minor child all documents and correspondence regarding this parentage action in the event of court activity, if any, at a later date; and
(c) To comply with all court orders and to attend all meetings and court hearings pertaining to the residential schedule that are scheduled in this action.

4. OTHER: In the event of further disputes pertaining to the parent plan for this minor child and / or prior to any changes being made in the residential schedule:

a. The guardian ad litem shall have access to all Superior Court files and all Juvenile Court files, including any sealed / confidential portions thereof.. The clerk of the court shall provide certified copies of this order to the guardian ad litem upon request and without charge.
b. The guardian ad litem shall be entitled to notice of all court proceedings.
c. The guardian ad litem shall have access to the minor child and information about the child. Each party and their counsel shall cooperate fully in providing access to the guardian ad litem and in providing all requested information.
d. The guardian ad litem shall have access to all school, medical, therapy and counseling records and information, whether written or oral, regarding this child and the parents. These records shall be released directly to the guardian ad litem upon presentation of a copy of this Order in person or by mail.
e. The guardian ad litem shall have access to all Child Protection Services, Department of Social and Health Services and alcohol/substance abuse treatment

records regarding these parties and their child without further written release by either parent upon presentation of this Order to these agencies. However, these agencies mat black out names and identification of such individuals who are protected by law or agency that release of this information is likely to cause severe psychological or physical harm to the juvenile or her parents, the agency may withhold the information subject to others orders of the court. CPS, DSHS and alcohol and substance abuse treatment personnel are authorized to speak personally with the guardian ad litem.

f. The guardian ad litem shall have access to all TIEPINS and police reports regarding these parties and their child. Written copies of these items shall be released to the guardian ad litem upon request by law enforcement agencies. However, these agencies may black out names and identification of such individuals who are protected by laws or agency policy as confidential sources.

g. The guardian ad litem shall maintain any information received as confidential and shall not disclose said information except in oral or written reports to the court, the parties and their counsel.

h. The guardian ad litem shall make a full and complete written report to the court and counsel/parties within 60 days of entry of this Order, provided that an extension may be granted by the court. This report shall include recommendations and basis for those recommendations.

i. Other duties of the guardian ad litem include appearing at all court hearings where the residential care of the child is at issue unless excused by the court, and assisting the parties and counsel in reaching a resolution of the of the matters involving said child. If resolution is reached, the guardian ad litem shall assist counsel in drafting a proposal for

presentation to the court for approval along with the guardian ad litem's report.

j. The fees and costs of the guardian ad litem shall be paid as set forth in the Judgment and Order Determining Parentage.

k. Each party shall execute any and all release of information necessary for the guardian ad litem to comply with the court's orders.

DATED this 19th day of *September*, 1995.

s/ Sharon S. Armstrong
Sharon Armstrong, Judge

Presented by:
LAW OFFICES OF F. ANDREKITA SILVA

_____
Andrekita Silva, WSBA NO. 17314
Attorney for Petitioner

Copy received and
Notice of Presentation Waived by:

_____
Robert J. May
Respondent, Pro Se

Copy received and
Notice of Presentation Waived by:

_____
Don J. Layton, M.S.W.
Guardian ad litem

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

| | |
|---|---|
| DESIREE LUANA DOUGLASS<br>Natural Mother,<br>Petitioner,<br>and<br>DOMINICK EMIL MAY-DOUGLASS<br>Child,<br>vs.<br><br>ROBERT JOSEPH MAY<br>Presumed Father,<br>Respondent. | )<br>)<br>) No. 94-5-03704-9<br>)<br>) JUDGMENT AND<br>) ORDER<br>) DETERMINING<br>) PARENTAGE AND<br>) GRANTING<br>) ADDITIONAL<br>) RELIEF |

## III. JUDGMENT SUMMARY

[x] The judgment summary is as follows:

A. Judgment Creditor Desiree L. Douglass
B. Judgment Debtor Robert J. May
C. Principal judgment amount (back support) $ 3075.00
from June 1994 to August 31, 1995.

D. Interest to date of Judgment $ 0
E. Attorney's fees $ 0
F. Costs $ 0
G. Other recovery amount $ _____
H. Principal judgment shall bear interest at 12 % per annum.
I. Attorney's fees, costs and other recovery amounts shall bear interest at 12 % per annum.
J. Attorney for Judgment Creditor: F. Andrekita Silva
K. Attorney for Judgment Debtor Robert J. May, Pro Se

A. Judgment Creditor Desiree Douglass
B. Judgment Debtor Robert J. May
C. Principal judgment amount (back day care) $ 2749.00
From June 1994 to August 31, 1995.

D. Interest to date of Judgment $ 0
E. Attorney's fees $ 0
F. Costs $ 0
G. Other recovery amount $ 0
H. Principal judgment shall bear interest at 12 % per annum.
I. Attorney's fees, costs and other recovery amounts shall bear interest at 12 % per annum.
J. Attorney for Judgment Creditor F. Andrekita Silva
K. Attorney for Judgment Debtor Robert J. May, Pro Se

A. Judgment Creditor Andrekita Silva
B. Judgment Debtor Robert J. May
C. Principal judgment amount (back support): $_____
D. Interest to date of Judgment $ 00.00
E. Attorney's fees $10,000.00
F. Costs $_____
G. Other recovery amounts
H. Principal judgment shall bear interest at ___% per annum.
I. Attorney 's fees, costs and other recovery amount Shall bear interest at 12 % per annum.
J. Attorney for Judgment creditor Andrekita Silva
K. Attorney for Judgment debtor Robert J. May, Pro Se

## I. BASIS

This matter has come before this court, the court considered the case record to date and has previously entered its findings of fact and conclusions of law.

## II. ORDER

IT IS ORDERED that:

3.1. DESIGNATION OF NATURAL FATHER.

Robert J. May is the father of Dominick Emil-May Douglass, born to Desiree L. Douglass, on June 22, 1993.

The child's social security number for Dominick is 531-29-5864.

3.2. RESIDENTIAL SCHEDULE/PARENTING PLAN.

The parenting plan signed by the court on the same date as the court approved this order below is adopted and incorporated by reference.

3.3. ORDER OF CHILD SUPPORT.

Robert J. May shall pay child support as set forth in the Order of Child Support which is filed separately.

3.4. JUDGMENT.

Attorney fees: the Petitioner, Desiree Douglass, shall be awarded attorney fees in the amount of $10,000.00. Such award shall be entered as a judgment directly to Petitioner's attorney of record, Andrekita Silva.

3.5. COUNTY COSTS.

Does not apply.

3.6. BIRTH CERTIFICATE

The birth certificate of the minor child in this action already correctly identifies Robert J. May as natural father. No additional action need be taken by the Department of Health, Office of Vital Records.

3.7. GUARDIAN AD LITEM

a. Continue appointment: The appointment of the guardian ad litem, Don Layton, M.S.W., shall remain

in place to protect the best interests of the child pending the age of *12.*

b. Temporary fees and costs of G.A.L.
Each party is responsible for *approximately* one half of the fees incurred for services performed by the guardian ad litem. The Petitioner continues to owe $*200.00* in unpaid fees. These fees shall be paid in full by the end of next month. The Respondent continues to owe $*1383.62* to the guardian ad litem in unpaid fees. The Respondent shall pay a minimum of $150.00 per month beginning immediately to the guardian ad litem until the fees and costs he owes are paid in full.

c. Future fees and costs: Prior to any additional work being done by the guardian ad litem being done, each party shall pay an advance retainer of $*200.00* a piece to be credited towards the work to be done.

The court shall allocate responsibility for payment of any fees and costs charged by the guardian ad litem, above and beyond the $ 400.00 combined advance retainer paid by *the* party after considering for what reason the fees and costs were incurred, whether one parties conduct or request was the basis for the fees being incurred, or any other factors the court deems relevant.

3.8. OTHER PROVISIONS.

a. Back Child Support and Day Care: The obligee parent, Desiree L. Douglass, is awarded a judgment against the obligor parent, Robert J. May, in the amount of $3075.00 for back child support for the period from June 1, 1994 to August 31, 1995 at the rate of $225.00 per month with credit given for three payments of $100.00. Additionally, the obligee parent, Desiree L. Douglas, is awarded a judgment

against the obligor parent, Robert J. May, for $2749.00 which is his share of day care costs incurred from June 1, 1994 to August 31, 1995. *The daycare costs numbered mere $7178. Respondent shall be ½, after deducting City of Seattle credits of $1680.00.*

b. Unpaid support due to Washington or California: The unpaid support due to both the State of Washington and the State of California for public assistance by Robert J. May is waived and will not be collected by either the State of Washington or the State of California.

c. Collection Limitation Against Wages:

Not applicable.

The obligee parent and/or the State of Washington may use any collection remedy available by law, including, but not limited to, certification for collection to the Internal Revenue Service. Payment shall be made to:

Washington State Support Registry for the benefit if Desiree L. Douglass

d. Wage Withholding Action:

A notice of payroll deduction may be issued or other income withholding action under Chapter 26.18 RCW or Chapter 74.20A RCW may be taken, without further notice to the judgment debtor any time after entry of an order by the court.

e. Judgment and Back Support Payments Shall Be Made:

To the: Washington State Support Registry
P.O. Box 9009
Olympia, Washington 98507
Phone #: 1-800-922-4306

Each party shall notify the Washington State Support Registry of any change in residence address.

3.9. OTHER:

a. Cost for Intermediary: The parties shall share equally the fees charged by the intermediary for visitation.
b. Restraining provisions:

(1) The Respondent, Robert J. May, shall be restrained from going within 50 yards of the residence of the mother.
(2) Both parties are restrained from assaulting, harassing, molesting or disturbing the peace of the other party. This order shall terminate two years from entry of this order unless either party brings a motion prior to the date of termination and unless an order continuing the restraints are granted by the court prior to termination.
(3) Both parties are restrained from contact with the other either directly, in person, on the telephone, in writing or through third parties. Notwithstanding the above, the parties may have that contact necessary to communicate with respect to the care of Dominick or in the event of emergencies pertaining to Dominick. Unless it is an emergency, the contact should be in writing. This order shall 18 months from entry of this order unless either party brings a

motion prior to the date of termination and unless the guardian ad litem makes a written recommendation that such no contact order should be extended.

DATED this 27TH/ day of *September*, 1995.

s/ Sharon S Armstrong
Sharon Armstrong, Judge

Presented by:
LAW OFFICES OF F. ANDREKITA SILVA

_____
Andrekita Silva, WSBA NO. 17314
Attorney for Petitioner

Copy received and
Notice of Presentation Waived by:

_____
Robert J. May
Respondent Pro Se

Copy received and
Notice of Presentation Waived by:

_____
Don Layton, M.S.W.
Guardian ad litem

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

| | |
|---|---|
| DESIREE LUANA DOUGLASS<br>Natural Mother,<br>Petitioner ,<br>and<br>DOMINICK EMIL MAY-DOUGLASS<br>Child,<br>vs.<br><br>ROBERT JOSEPH MAY<br>Presumed Father,<br>Respondent. | )<br>)<br>) No. 94-5-03704-9<br>)<br>) FINDINGS OF FACT<br>) AND<br>) CONCLUSIONS OF<br>) LAW<br>)<br>)<br>) |

## I. BASIS FOR FINDINGS

The Findings are based on trial. The following people attended:

a. Petitioner, Desiree L. Douglass.
b. Petitioner's Lawyer, Andrekita Silva
c. Respondent, Robert J. May, Pro Se
d. Don Layton, M.S.W., Guardian ad litem
e. Witnesses for both parties

## II. FINDING OF FACT

Upon the basis of the court record, the court FINDS:

2.1. NOTICE AND BASIS OF PERSONAL JURISDICATION OVER THE RESPONDENTS.

All parties necessary to adjudicate the issues were served with a copy of the summons and petition and are subject to the jurisdiction of this court.

The facts below establish personal jurisdiction over the Father:

a. The father was served within the State of Washington.
b. Both parties reside within the State of Washington.
c. The minor child may have been conceived as a result of sexual intercourse occurred within the State of Washington.

2.2. CONCEPTION OF THE CHILD.

The mother and father engaged in sexual intercourse resulting in the conception of Dominick Emil May-Douglass who was born on June 22, 1993.

2.3. PARENTAGE.

a. Robert J. May acknowledges paternity of Dominick Emil May-Douglass.
b. The court has found Robert J. May to be the father of Dominick Emil May-Douglass.

2.4. OTHER PARTIES.

a. A guardian ad litem was appointed and is a party to this action. There were no other parties. The guardian ad litem shall remain a party to this action.

2.5. COSTS AND FEES.

The Petitioner, Desiree L. Douglass, has incurred reasonable attorney fees and costs in excess of $22,000.00. Legal fees around $12,000.00 could have been anticipated. However, amounts over that were the result of excess litigation by the Respondent, Robert J. May, and were vexatious.

The Respondent, Robert J. May, shall be liable for attorney fees and costs in the amount of $10,000.00 to be

entered as a judgment directly to the Petitioner's attorney of record.

2.6. CONTINUING RESTRAINTING ORDER.

A continuing restraining order is necessary because the Respondent is not accepting of the Petitioner's position that their relationship is over. This is a source of anger and frustration to him. Restraints and no contact are necessary until the Respondent is able to address these issues in anger management.

In order to avoid contact, the transitions for visitation should occur at the day care or school when the day care/school is open and at Common Ground (or other intermediary hired or selected by the mother when the day care/school is not open. The fees charged by the intermediary shall be shared equally by the parties.

The children in the father's or mother's home should not be bound by the restraints between the mother and father and the children in the father's home should have whatever contact all parties deem appropriate with mother and her environment with the exception that the father shall not violate the restraints or no contact provisions by communicating through the children what is not permitted directly by him.

2.7. RESIDENTIAL SCHEDULE/PARENTING PLAN:

With a few exceptions, all aspects of the Petitioner's Proposed Parent Plan dated should be adopted, including but not limited to the decision making, restrictions and limitations.

One exception pertains to the proposal made by the Petitioner during her oral testimony in trial. The Petitioner proposed that the visitation for Dominick be once per week, overnight, rather than twice per month overnight with evening visits during the week. That

proposal should be adopted by the court with visitation being every second and fourth Saturday overnight and every first, third and fifth Wednesday of the month, overnight.

The Petitioner's proposed provision permitting her to move out of the area without a court order or mutual written agreement is not approved but a preference shall be given to the parameters set forth in her parent plan, which are based on the recommendation of the guardian ad litem when determining the visitation for a move from the area.

The court finds the limitations and restrictions requested appropriate. The court has concerns beyond the differences in the parenting styles of the parents. The court finds that although the children in the father's home have done well in sport, art or music, and have friends, and this speaks well to Respondent, father, there were other elements which were absent. There is a high level of anger in the father's environment which is not good for children in the environment. For that reason, the children shall be placed in the primary care of the mother with limited contact to the father.

The father is a man of enormous achievement but anger is a dominant mode. He must work in treatment for his anger very seriously. Although the court does not order, the court recommends that he take steps to determine if there is a chemical imbalance.

Although it is possible that the mother and father may be able to work together in the future, a no contact order is appropriate at this time. The father is having difficulty accepting the mother's position that the relationship is over and this is a terrible source of frustration and anger to the Respondent. It is important to have no contact except that contact absolutely necessary to communicate regarding Dominick's needs.

The parenting plan signed by the court on the same date as these findings of fact were signed and approved is approved and incorporated as part of these findings.

2.8. CHILD SUPPORT.

The minor child, Dominick Emil May-Douglass, is in need of support and child support should be set pursuant to the Washington State Child Support Schedule.

The court has considered the father's request for a deviation from the schedule based on the fact that he has four children in his home for whom he provides care and support and the court has considered that he receives low support payments from the mother's of the children not a party to this action. The court has also considered the benefits which the Petitioner, mother, began to receive in May of 1995 from the City of Seattle to assist her with day care costs. The father will pay 50% of day care costs charged by the day care provider, *less daycare* benefits received by the mother from the City of Seattle. It is anticipated that the level of benefits, if any are to be received in the future, will change based on changes in the petitioner's financial circumstances, including but not limited to child support paid by the father.

A deviation as a result of the father's care of four other children is appropriate in this case and should be ordered. The Order of Child Support signed by the court on the same date as these findings of fact were signed and approved and the child support worksheet which has been approved by the court are incorporated by reference in these findings.

2.9. OTHER:

a. COST OF GUADIAN AD LITEM: Fees and costs of $3491.00 were incurred for the services of the guardian ad litem. Those costs should be shared

equally. The Petitioner has paid $1457.38 and owes $293.25 for her one half of fees and costs to the guardian ad litem. The Respondent has paid $450.00 and owes $1290.37 to the guardian ad litem. The Respondent shall pay a minimum of $150.00 per month beginning immediately to the guardian ad litem until the fees and costs he owes are paid in full. The Petitioner has arranged to pay the balance she owes in full next month.

Before the guardian ad litem does further work on this matter for the parties, each party shall pay an advance retainer of $400.00 to be applied to fees and costs for work to be performed by the guardian ad litem.

In the future, the court shall allocate responsibility for payment of any fees and costs charged by the guardian ad litem, above and beyond the $400.00 advance retainer paid by each party after considering for what reason the fees and costs were incurred, whether one parties conduct or request was the basis for the fees being incurred, or any other factors the court deems relevant.

## III. CONCLUSIONS OF LAW

The court makes the following conclusions of law from the foregoing findings of fact:

3.1. JURISDICTION.

The court has jurisdiction to enter an order in this matter.

3.2. DISPOSITION.

The court shall

a. determine the parentage of Dominick Emil May-Douglass;
b. make provisions for a parenting plan;
c. make provisions for the past and current support of Dominick Emil May-Douglass;
d. and make provision for costs including Guardian Ad Litem fees, health insurance costs and attorney fees.

3.3. CONTINUING RESTRAINING ORDER.

A continuing restraining order including no contact provisions should be entered.

3.4. OTHER PARTIES.

The guardian ad litem, Don Layton, shall remain a party to this action.

3.5. OTHER:The fees charged by the intermediary hired for visitation shall be shared equally by the parties.

DATED this 19th day of September, 1995.

s/ Sharon S Armstrong
Sharon Armstrong, Judge

Presented by:
LAW OFFICES OF F. ANDREKITA SILVA

_____
Andrekita Silva, WSBA NO. 17314
Attorney for Petitioner

Copy received and
Notice of Presentation Waived by:

_____
Robert J. May
Respondent Pro Se

Copy received and
Notice of Presentation Waived by:

_____
Don Layton, M.S.W.
Guardian ad litem

Supreme Court, U.S.
FILED
FEB 11 2002
OFFICE OF THE CLERK

(2)

No. 01-1009

In The

# Supreme Court of the United States

ROBERT JOSEPH MAY,

*Petitioner,*

v.

DESIREE LUANA DOUGLASS,

*Respondent.*

**On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Washington**

## BRIEF IN OPPOSITION

DESIREE DOUGLASS
2404 Mill Avenue
Bellingham, WA 98225
(360) 756-6960

*Respondent Pro Se*

2588

## PARTIES TO THIS PROCEEDING

Parties to this proceeding include the following persons:

Robert May
Petitioner
P.O. Box 893
Riddle, OR
(541) 874-3664

Desiree Douglass
Respondent
2404 Mill Avenue
Bellingham, WA 98225
(360) 756-6960

Renee Ewalt, Attorney at Law
Appointed Guardian ad Litem
2116 SW 120th Street
Seattle, WA 98146
(206) 242-9822

Please note that Petitioner did not include Ms. Renee Ewalt, Court-Appointed Guardian ad Litem, to the list of Parties, however, per the King County Superior Court Order Appointing GAL, dated February 27, 2001, Ms. Ewalt is a party to this proceeding. The Petitioner should have notified the GAL of this proceeding per the Order Appointing GAL dated 2/27/01.

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## RESPONDENT'S STATEMENT OF THE CASE

Desiree Douglass is the Respondent in this United States Supreme Court action initiated by Petitioner. I am the natural mother of Dominick Emil May-Douglass. I respectfully ask the United States Supreme Court to deny Petitioner's Petition for Writ of Certiorari.

This is a case of the Court correctly intervening to protect Dominick Emil May Douglass's safety, well-being and best interest. The Petitioner has a long history of domestic abuse towards his wives and his children and is unwilling to address the severity of his problems through the steps laid out by the Washington State Courts.

The Supreme Court of the State of Washington's Order Denying Motion for Discretionary Review (July 26, 2001, found at Petitioner's Appendix A4-A5) was correct. (The State of Washington Court of Appeals, Division I Order Denying Motion to Modify (May 9, 2001 found at Petitioner's Appendix page A6) and the State of Washington Court of Appeals, Division I Order Denying Discretionary Review (March 12, 2001 found at Petitioner's Appendix page A7-A10) were appropriate rulings.

The Courts of the State of Washington (Court of Appeals Division 1 and King County Superior Court) have repeatedly laid out the clear steps that Petitioner should take to resolve his issues and to reinstate visitation. The Court's requirements of Petitioner are specifically ordered to protect our child, Dominick Emil May-Douglass from any harm, mental, emotional or physical, that could occur as a result of Petitioner's unresolved issues with anger and control. The steps include completing anger therapy, providing documentation and paying

the court-appointed Guardian ad Litem so that she can review the anger therapy (for adequacy and compliance with the Washington State anger management certification requirements) and make a written recommendation to the Court for appropriate visitation. The State of Washington Courts have the proper responsibility to order these requirements under RCW 26.09.260(1)(4) and (9).

Requirements for Petitioner's anger therapy treatment and for a court-appointed Guardian ad Litem were included in the Final Parent Plan Orders and Order Appointing Guardian ad Litem, issued in September 1995 by the King County Superior Court (Order found at Petitioner's Appendix pages A24-40 and A41-44).

Petitioner was dismissed without progress from the Veteran's Administration Anger Management program in Seattle, WA in December 1996. Petitioner did not reenter an anger management program again for three years (summer of 2000), and then apparently attended for a period of 1-3 months (unclear from records provided). State of Washington has specific requirements for anger management/domestic abuse counseling such as mandatory physical attendance for a minimum of one year; collateral contact between counselor and last domestic violence victim, etc. The requirement for a GAL in this case is exactly to review the anger therapy for compliance with these requirements for the Court for the protection of Dominick. Petitioner is a graduate of University of Washington School of Law and is fully aware of the role of a GAL. The Final Parent Plan orders' requirements for anger therapy and GAL review are to ensure that Dominick's rights to safety are protected, especially in light of Petitioner's documented history of domestic violence.

The May 19, 1997 King County Superior Court Order (found at Petitioner's Appendix pages A21-A23) did not deprive Petitioner of the care, custody and companionship of Dominick Emil May-Douglass for over four years and without good cause or in contravention of the Revised Code of Washington 26.09, the law of the case or Washington Case Law or the constitution of the United States. The May 19, 1997 Order did not improperly and unlawfully deprive Petitioner of his parental rights or his constitutional rights.

The May 19, 1997 Order and the August 4, 1997 Order did not overturn the trial court Parent Plan Order, Findings of Fact and Conclusions of Law, or Order Appointing Guardian ad Litem (September 19, 1995). The May 19, 1997 order found Petitioner in Contempt of Court based on his failure to complete therapy/counseling for anger/control issues; his willful and intentional refusal to return Dominick to his mother on time; and his willful, intentional refusal to cooperate with the Court-appointed Intermediary, Common Ground. The May 19, 1997 ruling was not in error and did establish the facts upon which the finding of Contempt was made. The Court ruled under RCW 26.09.191(3), which directs the Court to protect the safety, well-being and interests of the child and the temporary suspension of visitation was ordered.

Evidence presented in that hearing and in subsequent hearings in June 1997, August 1997, and before Commissioner Bradburn-Johnson, Judge Armstrong in January, February and March 2000 and before Judge Scott in November 2000 (Found in Petitioner's Appendix at pages A11-A14) showed that Petitioner willfully and

intentionally refused to cooperate with the Intermediary Service Common Ground, and willfully refused to return the child Dominick Emil May-Douglass to Common Ground at the Court-ordered time, keeping him out of state against the Parent Plan Orders. This material included affidavits from Common Ground, the intermediary, police reports, etc. The Court was correct in finding that Petitioner willfully and intentionally refused to return Dominick on time; willfully and intentionally refused to cooperate with Common Ground and refused to participate in therapy/counseling for anger/abuse problems. The Court reviewed numerous exhibits including police reports, declarations by the Court-Appointed Intermediary Common Ground, Veterans Administration Domestic Violence Program and others. These Exhibits documented Petitioner's ongoing abusive behaviors toward his former wives, children and Respondent in this case. They also documented the ongoing risk of Petitioner absconding with Dominick (Filed in The Supreme Court of the State of Washington under case No. 71145-3, Appendix 4, Declaration of Desiree Douglass Attaching Exhibits, dated October 27, 2000, Exhibits 5, 6, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 45, 46, 48, 49, 50, 51, and 53).

The King County Superior Court February 27, 2001 Orders Appointing Guardian ad Litem (Found in Respondent's Appendix pages A1) and February 27, 2001 Order Denying Motion to Reinstate Parent Plan and June 21, 2001 Ruling by King County Superior Court Judge Barnett Denying Revision and Reconsideration do not continue to deny Petitioner's parental rights or unlawfully suspend Petitioner's visitation schedule. These orders

established a new Guardian ad Litem in the case so that a new GAL review and recommendation could be prepared for the case. The Guardian ad litem fees are appropriate at $3,000 for the following reasons:

1. Petitioner's refusal to pay the first Guardian ad litem, Don Layton, the court-ordered Guardian ad litem fees of nearly $1,300 for work already performed by the Guardian ad litem (King County Superior Court Order dated September 19, 1995). Petitioner subsequently discharged this debt and $10,000 of legal fees awarded to Desiree Douglass (mother) in bankruptcy proceedings filed several years later;

2. Petitioner's refusal to pay Caroline Davis (second appointed GAL) the required retainer for 2.5 years. Petitioner writes to the Court-Appointed GAL Caroline Davis in a letter dated June 24, 1997: (CAPS in original letter) (Filed in The Supreme Court of the State of Washington under case No. 71145-3, Appendix 4, Declaration of Desiree Douglass Attaching Exhibits, dated October 27, 2000, Exhibit 11).

   June 24, 1997

   To: CAROLINE D. DAVIS, ATTORNEY AT LAW, COURT APPOINTED GUARDIAN AD LITEM

   From: Robert May

   PLEASE TAKE CAREFUL NOTICE: I SHALL NOT BE RESPONSIBLE FOR ANY EXPENSES YOU INCUR IN THIS ACTION. IF YOU APPEAR, I WILL NOT BE RESPONSIBLEYOU'RE YOUR EXPENSES. WE HAVE NO CONTRACT AND WE HAVE NO AGREEMENT. I AM ONT ORDERED TO RETAIN YOU. YOUR FEES ARE BEYOND THE SCOPE OF THE COURT ORDER. THE NEED FOR YOUR SERVICES IS THE SUBJECT OF AN APPEAL. THEAN YOU FOR YOU INTEREST. YOU WILL CONTINUE TO RECEIVE NOTICE

UNLESS YOU ADVISE ME YOU ARE WITHDRAWING. THIS IS A "HIGH CONFLICT" CASE WITH NEARLY EIGHT VOLUMES. I EXPECT IT WILL BE MANY MORE BEFORE THIS COMES TO FINAL ADJUDICATION. I ADVISE THIS ONLY TO MAKE YOU AWARE OF THE MAGNITUDE OF THIS CONFLICT. THE $1800.00 RETAINER FEE WILL VAPORIZE. NEITHER OF US CAN AFFORD $120.00 PER HOUR. Robert J. May, Esq.

3. Court has ordered that Petitioner pay the entire retainer with 50% of the retainer ($1,500) to be set as credit for Petitioner's child support arrears (now well over $10,000 in arrears).

Petitioner's refusal to pay the Guardian ad Litems for work performed or for retainers required is the very reason that the last three GALs appointed to this case by the King County Superior Court have been unable to perform their duties in the case. Petitioner's visitation has been suspended for over four years because he has refused to complete and show evidence of completion of counseling in anger/control/domestic abuse issues in a program with requirements that match the Washington State requirement for Domestic Abuse programs (i.e. minimum of year attendance; collateral contact between counselor and victim, etc.) and Petitioner has continued to refuse to pay the appointed Guardian ad Litem's (Caroline Davis (appointed 1997 to 1999) and Renee Ewalt (appointed 2001), the required retainer. Petitioner still refuses to pay Renee Ewalt, the Guardian ad Litem that he selected, the required retainer. That the Petitioner disagrees with the Court's order appointing a GAL and refuses to pay her retainer is not a violation of his Constitutional Rights.

As an example of Petitioner's motivation and state of mind in regard to Respondent, see below verbatim e-mail sent by Petitioner to Respondent and Respondent's counsel at the time on February 5, 2001. (Filed in Supreme Court of State of Washington under case No. 71145-3, Response to Petition for Discretionary Review dated June 30, 2001, Appendix 6). In this e-mail, Petitioner writes: (italics and bold from the original electronic mail letter).

> *Re: Ms. Douglass to enter appearance, terminate representation, GAL 2/5/01 6:32:51 pm Central Standard Time from: cougarmay@hotmail.com* (RJM)
> to: *andrekita@aol.com* and *todesiree@aol.com*
>
> Dear Ms. Silva (and Ms. Douglass)
>
> " . . . I suppose this message is a precursor to more intense litigation. That is too bad, yet it is to be expected. More litigation, no matter how characterized, really had no further affect on me and my resolve. I consider it hurts my child, but so would no litigation as Douglass will not settle or concede! My child and his best interests are at stake. Douglass' actions are detrimental to the mental health and development of my son. Douglass no longer interests me. Her selfish nature is not my concern. Her claims and her case have little relevance to the issues . . . Can the piles of declaratory evidence presented standup to real scrutiny and timely objections with the intent to pursue any objection to final adjudication? We shall see?
>
> Douglass has had her way for sometime to the detriment of my youngest child. Do you see the detriment? Forget the attorney persona in which you are entitled to cloak and protect your real self. Do you see the detriment? It is not that difficult! If you can

not get past the attorney persona or you have come to believe the tripe Douglass cuts out and serves up, then I guess your vision depends upon a further finding of fact and what the real, substantive evidence to be presented before the courts.

The evidence is repeated and piled as high as 14 court volumes. No one, not any newly appointed GAL or you as her attorney will completely read . . . if my guess is correct. What happens goes from this moment forward. Ultimately, I will prevail. If you believe otherwise, my assessment of your skills may have to be reconsidered. A negotiated peace (truce) seems the best choice at this moment. I consider this email and its content negotiation to resolve the issues. Being that this is negotiation for settlement, as was my prior emails, I begin to expect response to the negotiation. As I consider this email negotiation, I consider it as protected. I hope my meaning here is clear to the legally learned.

Sincerely, Bob

This case is not about Petitioner's love for Dominick and his wish to participate in a wholesome way in Dominick's life. Per the numerous Washington State Court's orders, all Petitioner has to do to cure the contempt is show substantial progress in anger therapy and pay the GAL to review the progress in therapy and the case and make a recommendation to the Court for appropriate visitation, per the September 1995 Final Parent Plan Orders. Petitioner's refusal to participate in therapy for 3 years and refusal to pay Caroline Davis (GAL) for 2.5 years, his refusal to pay the retainer to the new GAL, Renee Ewalt since her appointment on February 27, 2001, and his refusal to provide any financial support to

Dominick all clearly show his lack of interest in Dominick's well-being. Dominick has received no support from Petitioner since January 1999 and the arrears child support is now well over $10,000.

Please note in the record the following errors in Petitioner's Petition:

1. At page i Petitioner uses the term "indefinitely suspends". Petitioner's visitation was "temporarily suspended" pending Petitioner's completion of court requirements.

2. At page 4 of Petition, Petitioner states "Family Law Court . . . granted respondent's modification of the parent plan order". Respondent did not file a "motion for modification of parent plan" but simply moved the court to be allowed to move from the Seattle area. Such a move was allowed by the Final Parent Plan Orders, dated September 1995, with written court permission. Respondent sought and was granted court permission.

3. At page 6 of Petition, Petitioner states "Respondent's fifth of six interstate moves and ninth residential moves". Petitioner has included every work-related trip of any duration to greatly exaggerate.

4. At page 8 of Petition, Petitioner states "Respondent then through court action opposed appointed of petitioner selected GAL candidate." Respondent opposed Renee Ewalt in June 2000 because she was not on the list of five GALs identified in the Court's orders to be considered as GAL for this case. Joan Ward, who was on the list was appointed and then resigned due to conflict of interest (presumably related to the Petitioner's Attorney of Record at the time, Brianna Cozetti Clark). After Joan Ward's resignation, Respondent accepted the appointment of Ms. Renee Ewalt

without objection. Petitioner has still refused to pay the retainer fee to his own selected GAL, Renee Ewalt.

5. At page 18 of Petition, Petitioner states "Two of these appointments were opposed by respondent without good cause . . . " I have only objected to two appointments for good cause. Once to a GAL who disclosed in writing to the parties that he was an aquaintance of the Petitioner during their years at the University of Washington Law School and that this could potentially result in a conflict of interest. While I had no objection to the GAL for personal or legal reasons, due to his own disclosure it seemed appropriate that he not serve as GAL. The other objection was simply because the Petitioner's chosen GAL was not on the court-selected list of GALs for this case.

## RESPONDENT'S ARGUMENT

1. The Family Law Parent Plan Order has not been modified at all since it was issued in 1995.

   a. The Parent Plan Order required that Petitioner complete therapy/counseling for anger and control issues. The Court has upheld this requirement, despite numerous motions by Petitioner to reinstate visitation without meeting this requirement. The Court ordered therapy to protect Dominick from Petitioner's problem with anger and abuse.

   b. The 1995 Parent Plan Order did require the use of an Intermediary to facilitate visitation exchanges for a period of 18 months after trial. In October 1996, the Court issued a Permanent Protection Order to protect Desiree Douglass from further incidents of domestic abuse, stalking and harassment by Petitioner. The need for an Intermediary

to facilitate visitation will also be permanent. Petitioner has filed numerous motions to vacate the protection order and the Court has consistently upheld the protection order. Judge Scott's ruling dated November 14, 2000 is only the most recent of the orders upholding the Permanent Protection Order. Petitioner's 20-year history of domestic abuse against his wives and children and threatening, stalking and harassment against myself makes the permanent protection order and the permanent use of an intermediary necessary.

c. The Parent Plan Order required that the custodial parent, Desiree Douglass, seek Court permission to move from the Seattle area. Petitioner moved to the State of Oregon in the fall of 1996. In the summer of 1997, Desiree Douglass properly sought and was granted permission by the Court to move from the State of Washington on August 4, 1997.

2. The Contempt is Curable. Per orders May 19, 1997, June 20th 1997 and August 4, 1997 and of Commissioner Bradburn-Johnson on 1/28/00, Judge Armstrong on 2/25/00 and 3/23/00 and Judge Steven Scott on November 14, 2001, contempt is curable by Petitioner following the Superior Court's orders to:

   a. Show documented progress in anger management;

   b. Have Guardian ad Litem appointed;

   c. Pay GAL retainer;

   d. Cooperate with GAL so they can investigate and prepare report with recommendations regarding appropriate visitation for Court review.

3. The May 19, 1997 Order is not unconstitutionally depriving Petitioner of the society of Dominick Emil

May-Douglass. The order correctly protects Dominick's right to a childhood without abuse, mistreatment or being absconded from his mother. Under RCW 26.09.191(3) Dominick's right to be protected supersedes Petitioner's right to his company. The court has provided the clear way for Petitioner to sincerely address his problem with abuse and anger.

4. Petitioner's Motion for Discretionary Review in the Court of Appeals did not meet the criteria for acceptance of review under RAP 2.3(b). Per RAP 2.3(b) Discretionary Review will be accepted only if: 1) The Superior Court has committed an obvious error which would render further proceedings useless; or substantially alters the status quo or substantially limits the freedom of a party to act. Or 2) If the Superior Court has so far departed from the accepted and usual course of judicial proceedings or so far sanctioned such a departure by an inferior court or administrative agency, as to call for review by the appellate court.

None of these criteria apply. The Superior Court of King County did not commit obvious errors which interferes with Petitioner's constitutional rights nor renders further proceedings useless. Petitioner's freedom to act is not substantially limited. The Court has clearly outlined the steps of action that Petitioner should take and he has yet to take them to cure the contempt. The court has not departed from the usual course of judicial proceedings. It has acted properly under RCW 26.09.191(3) to protect Dominick.

5. Petitioner's Motion for Discretionary Review in the Supreme Court of the State of Washington did not meet the criteria for acceptance of review under RAP Title 13. The standards for review for a Supreme

Court of the State of Washington Discretionary Review are "prevention of gross miscarriage of justice" and "extraordinary circumstances". Petitioner's Motion for Discretionary Review fails on both standards. There is no gross miscarriage of justice. The King County Superior Court is properly clear and steadfast in its requirements of Petitioner to complete counseling and pay and cooperate with the court-appointed GAL review and make written recommendation on the case prior to reinstatement of visitation to protect the best interests, the safety and well-being of Dominick May-Douglass under RCW 26.09.191(3) which directs the Court to protect the safety, well being and interests of the child. The only extraordinary aspects of this case are Petitioner's adamant refusal to comply with the Court's orders, Petitioner's litigiousness in returning repeatedly to Court with the same demands, and the damage to my family that this litigation has caused.

6. Petitioner's Petition for a Writ of Certiorari from the United States Supreme Court does not meet the criteria for acceptance of review under United States Supreme Court Rule 10. A Writ of Certiorari will be granted only for compelling reasons. Applicable standards to this case would be Rule 10 (b) and (c), addressing state courts of last resort rulings in conflict with other courts of last resort or a U.S. Court of Appeals on an important federal question or decides an important federal question that should be decided by the U.S. Supreme Court. Petitioner's Petition for a Writ of Certiorari fails on all standards. Petitioner has not lost parental rights without notice. Petitioner has all constitutional rights. Petitioner refuses to pay his share ($1,500) of the GAL retainer and refuses to advance the Respondent's share of the GAL retainer (also $1,500), which is to be credited to Petitioner's

child support arrears of over $10,000. Petitioner willfully refuses to cooperate with the GAL so that she may review the case and prepare a report for the King County Superior Court of the State of Washington to review. The Courts of the State of Washington have not entered any rulings in this case on important federal questions that are in conflict with other states courts of last resort, U.S. Court of Appeals or U.S. Supreme Court.

## CONCLUSION

I, Desiree Luana Douglass respectfully request that the Supreme Court of the United States grant the following relief:

1. Deny Petition for Writ of Certiorari
2. Impose sanctions on the Petitioner and Grant legal fees and costs to the Respondent for the amount of $693.00 for fees to format, copy, mail and file this response.

DESIRÉE L. DOUGLASS, Respondent

SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

| | |
|---|---|
| DESIREE LUANA DOUGLASS<br>Natural Mother<br>Petitioner<br><br>and<br>DOMINICK EMIL MAY-DOUGLASS<br>Child,<br><br>Vs.<br>ROBERT JOSEPH MAY<br>Father, Respondent. | Case No.:<br>NO. 94-5-03704-9-SEA<br><br>ORDER APPOINTING GUARDIAN AD LITEM/ ~~INVESTIGATOR~~/~~LAWYER~~ ON BEHALF OF MINOR **(ORAPGL)** |

## I. BASIS

1.1 CHILDREN TO WHOM THE ORDER APPLIES.

The court appointed a guardian ad litem at the request of the mother, and after a trial in this action and an Order Appointing Guardian Ad Litem was entered on September 19, 1995 and again entered orders maintaining the appointment of a Guardian ad Litem on 1/14/97, 1/28/00, and 6/30/00 as guardian ad litem for the following minor child in this action[, and order denying relief to father, dismissing petition and referring matter to commissioner for appointment of new GAL dated 11/14/00: /s/ NBJ]

| Name | Birthdate |
|---|---|
| Dominick Emil May-Douglass | June 22, 1993 |

1.2 BASIS FOR THE APPOINTMENT

This appointment is being made pursuant to RCW 26.26 Parentage Act and Pursuant to the court's authority as set out in RCW 26.12.

## II. FINDINGS

After reviewing the case record to date and the basis for the motion, the Court FINDS that the motion should be granted to maintain an appointment of a guardian ad litem until age 12 because of the serious nature of the allegations which, if true, could have harmful consequences for the parties' minor child.

The court found at paragraph 2.2 of the Parent Plan, Final Order that

> "The father's conduct may have an adverse effect on the child's best interest because of the following factors which follow: The abusive use of conflict and intimidation by the parent which creates the danger of serious damage to the child's psychological development. This factor serves as a current basis for restrictions with respect to decision making and dispute resolution and serve to limit the frequency of exchanges of residential care."

## III. ORDER

IT IS ORDERED THAT:

3.1 APPOINTMENT OF GUARDIAN AD LITEM/ INVESTIGATOR/LAWYER.

[Renee Ewalt /s/ NBJ] is appointed as guardian ad litem for the following minor child of the parties:

Dominick Emil May-Douglass

3.2 DUTIES OF THE GUARDIAN AD LITEM/INVESTIGATOR/LAWYER.

The undersigned guardian ad litem agrees to this appointment, understands the nature of this action and accepts the following responsibilities:

a) To protect the legal interests of the minor child through the age of 12 with respect to any issues that arise pertaining to the parent plan; and

b) To explain to the minor child all documents and correspondence regarding this parentage action in the event of court activity; and

c) To comply with all court orders and to attend all meetings and court hearings pertaining to the residential schedule that are scheduled in this matter.

For the purpose of the present dispute and in the event of further disputes in the future pertaining to the parent plan for this minor child and/ or prior to any changes being made in the residential schedule [t /s/ NBJ]he guardian ad litem shall:

a. have access to all Superior Court files and all Juvenile Court files, including any sealed/confidential portions thereof. The clerk of the court shall provide certified copies of this order to the guardian ad litem upon request and without charge:

b. be entitled to notice of all court proceedings;

c. have access to the minor child and information about the child. Each party and their counsel shall cooperate fully in providing access to the guardian ad litem and in providing all requested information;

d. have access to all school, medical, therapy and counseling records and information, whether written or oral, regarding this child, if the child is under the age of 12. These records shall be released directly to the guardian ad litem upon presentation of a copy of this Order either in person or by mail. The guardian ad litem shall have access to the medical, therapy and counseling records of the parents only if there is an allegation of sexual abuse of the child or neglect and there is a separate court order allowing such access;

e. have access to all Child Protection Services and Department of Social and Health Services records regarding these parties and their child without further written release by either parent upon presentation of this Order to these agencies. However, these agencies may blackout names and identification of such individuals who are protected by law or agency policy as confidential sources. If it is determined by the agency that release of this information is likely to cause sever psychological or physical harm to the juvenile or his or her parents, the agency may withhold the information subject to other orders of the court. CPS, DSHS, and alcohol and substance abuse treatment personnel are authorized to speak personally with the guardian ad litem;

f. have access to all TIEPINS and police reports regarding these parties and their child. Written copies of these items shall be released to the guardian ad litem upon request by the applicable and relevant Law enforcement agencies including but not limited to [/s/ NBJ] <u>all</u>.

However, these agencies may black out names and identification of such individuals who are protected by laws or agency policy as confidential sources;

3.3 OTHER DUTIES.

The guardian ad litem shall:

a. maintain any information received as confidential and shall not disclose said information except in oral or written reports to the court, the parties and their counsel; and

b. appear at all court hearings and pretrial conferences where the residential care of the child is at issue unless excused by the court;

c. make recommendations to the parties and to the court regarding issues that arise pursuant to the Parent Plan, Final Order or any other orders entered by the court regarding the residential care of the minor child;

d. assist the parties and counsel in reaching a resolution of the matters involving said child. If resolution is reached, the guardian ad litem shall assist counsel in drafting a proposal for presentation to the court for approval along with the guardian ad litem report.

3.4 PAYMENT OF FEES AND COSTS.

The fees and costs of the guardian ad litem shall be paid as follows:

Pursuant to the Judgment and Order Determining Parentage dated September 27, 1995 at page 4, paragraph 3.7.c. which permits the court to allocate responsibility for payment of any fees and costs charged by the guardian ad litem, beyond $400.00 combined advanced retainer paid by the parties

after considering for what reason the fees and costs were incurred, whether one parties conduct or request was the basis for the fees being incurred, or any other factors the court deems relevant.

Additionally pursuant to the court's order dated May 19, 1997 which found in a contempt proceeding resulting in the suspension of visitation and therefore the need for an investigation and review by the G.A.L., that the advance of the then appointed Guardian ad litem was $1800.00 and that the Father had failed to pay child support which further disadvantaged the mother's, and required the Father to pay the mother's one half share of her guardian ad litem fees, which payments would then be credited against the father's child support arrears.

And additionally pursuant to the order dated June 30, 2000 appointing Joan Ward and requiring the parties to pay fees and retainers according to prior orders.

The court finds based on the record before it that the advance retainer of in the amount of [NBJ] $3,000.00 is reasonable[, as previously ordered), based on the issues and complexity of the case.]

Per the court's order of May 19, 1997, the father shall be responsible for 50% of the advance retainer and the mother shall be responsible for 50% of the advance retainer. However, the father shall pay the mother's share of G.A.L. retainer fees, her share of the retainer shall be deducted from child support arrears.

Robert May is responsible for registering with the Oregon State Support Registry (or equivalent agency in state of residence) in order to formalize the credit.

The total amount of Guardian ad litem fees awarded shall be at the discretion of the court after the guardian ad litem files an itemized statement of time with the court, along with a specific request for fees and a proposed Order.

3.5 CONSENT OF CHILDREN OVER TWELVE TO INVESTIGATION.

[x] Does not apply.

3.6 AUTHORIZATION FOR RELEASE OF INFORMATION.

Each party's signature hereunder constitutes an authorization for release of information by that party. [/s/ NBJ Signatures are waived as this order was signed in chambers.]

3.7 OTHER: TERMINATION OF APPOINTMENT

This appointment shall terminate ~~upon the~~ [/s/ NBJ the sooner of] Dominick Emil May-Douglass reaching the age of 12 years[/s/ NBJ or further court order entered with notice to the parties and GAL, and an opportunity to be heard.]

OTHER: INVESTIGATION AND REPORT REGARDING THE RESIDENTIAL ISSUES IN DISPUTE AND PRESENTLY BEFORE THE COURT

To assist the court with entry of a court order in the best interest of the minor child regarding the residential issues presently before the court, the guardian ad litem shall investigate and make a full and complete written report to the court and counsel/ parties within 60 days of receiving an advance retainer or 120 days from the date of entry of this order, whichever is later, provided that an extension may be granted by the court. This report shall include recommendations regarding the residential

issues that are in dispute and presently before the court and basis for those recommendations.

2/27/01 1:25 PM
Dated: ~~2/23/01 4:00 PM~~
in chambers

/s/ Nancy Bradburn Johnson
~~Judge~~/
Commissioner

Presented by:

Andrekita Silva,
WSBA 17314
DATE:
ACCEPTED UPON
APPROVAL BY
THE COURT

Approved for entry:
Notice of presentation
waived:

Robert J. May,
Father Pro Se

Guardian Ad Litem
DATE:

(3)

No. 01-1009

Supreme Court, U.S.
FILED
MAR 12 2002
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2001

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Robert May,
*Petitioner*

v.

Desiree Douglass,
*Respondent*

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On Motion For Discretionary Review
To The Supreme Court of the State of Washington

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# REPLY TO BRIEF IN OPPOSITION

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Robert May
Post Office Box 893
Riddle, Oregon 97469
541 874 3664

*Petitioner Pro Se*

4188

February 27, 2001

## PARTIES TO THIS PROCEEDING

The names of all parties to this proceeding are contained in the caption of this case. Petitioner is an individual, not a corporate entity.

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## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

(1) The Fourteenth Amendment of the United States Constitution provides:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

(2) RCW 26.09.260 (Modification of parenting plan or custody decree) provides:

> (2) In applying these standards, the court shall retain the residential schedule established by the decree or parenting plan unless:
> (d) The court has found the nonmoving parent in contempt of court at least twice within three years because the parent failed to comply with the residential time provisions in the court-ordered parenting plan, or the parent has been convicted of custodial interference in the first or second degree under RCW 9A.40.060 or 9A.40.070.

## REPLY TO RESPONDENT'S STATEMENT OF THE CASE

### Reply Introduction

This case concerns the suspension (indefinite termination) of the Petitioner's parental rights. The foundation of this action is the November 14, 2000 Washington superior court order that denied review of that court's May 19, 1997 *sua sponte* order while ordering the further modification of said May 19, 1997 *sua sponte* order. *Douglass v. May*, Order Denying Relief To Father, Dismissing Petition, And Referring Matter To Commissioner For Appointment Of A New GAL, Washington Superior Court No. 94-5-03704-9 SEA (November 14, 2000, unpublished) /Petition for Writ of Certiorari, Appendix p. A-11-A-14. Both the November 14, 2000 court order and the May 19, 1997 court order maintain the suspension of the Petitioner's parental rights.

Washington superior court orders subsequent to November 14, 2000, including Order Appointing Guardian Ad Litem On Behalf of Minor dated February 27, 2001 (Respondent's Brief In Opposition, Appendix A-1), although germane to the merits of this case, have little relevance to this Petition for Writ of Certiorari.

### Respondent Misstates Facts

In her Brief in Opposition, Respondent responds to issues beyond the immediate scope of this appeal. In doing so, Respondent misstates facts of the case.

Contrary to the allegations and implications of Respondent, the May 19, 1997 *sua sponte* court action was not the result of intervention by that court into domestic violence or child abuse of any kind at any time. Pursuant to this case's December 1996 "Order

Setting Domestic Modification Case Schedule" issued by superior court, a scheduled Adequate Cause Threshold Hearing for Petition to Modify Parenting Plan Order was heard on May 19, 1997. That May 19, 1997 hearing was not recorded. The narrative filed and accepted for the record by Washington Superior Court is appended to this Reply. *May v. Douglass*, Narrative of Hearing of May 19, 1997 Before Commissioner Kimberly Prochnau (filed October 6, 2000)/Appendix A-62- A-84).

On May 19, 1997, after a hearing of less than thirty minutes that decided eight separate motions, the family law department of Washington superior court opined the case was a "high conflict case." On that basis, using its discretion without substantial evidence and without applying heightened scrutiny, that court *sua sponte* suspended Petitioner's parental rights pending, *inter alia*, the re-appointment of GAL and payment by the Petitioner of GAL retainer fees. *Id.*

Parties were allowed argue court's finding of "high conflict" case; and Petitioner was not allowed to defend against court's *sua sponte* order suspending his and his child's parent-child-family rights. *Id.* Review by superior court was denied. *Douglass v. May*, Order on Civil Motion (June 20, 1997 unpublished) Petition for Writ of Certiorari, Appendix A-20.

There is absolutely no history of domestic violence and no child abuse involved in the case. There exists no history and no reliable records of any kind, including court records, showing, proving, and documenting domestic violence involving the Petitioner. Respondent's allegations and implications concerning domestic violence and Washington superior court's intervention to protect the interests of the child are false, misleading, and cannot be substantiated by the record of this case.

It is not a fact and it is not a matter of lower court record that "Petitioner was dismissed without progress from Veteran's Administration Anger Management Program in Seattle WA in December 1996. Petitioner did not reenter an anger management program again for three years." Brief In Opposition at 2. Petitioner left that Seattle Veterans Affairs (VA) Anger Management Program in December 1996 after participating for nine months because he moved to Tigard, Oregon in December 1996. *See May v. Douglass*, Petition For Writ of Certiorari, Docket No. 01-1009 at p. 1. Petitioner began anew in a VA program in March 1997 to ensure he met the terms of the Parenting Plan Order that allowed increases in his residential schedule with Dominick upon satisfactory progress in said program. *Infra* p. 4; s*ee generally May v. Douglass*, Parenting Plan Final Order (Petition for Writ of Certiorari Appendix A-24 – A-40). Contrary to Respondent's response, the issues now before the Court neither concern abuse nor the terms and conditions of 1995 Parenting Plan Order; and do not directly concern the conditions superior court requires to reinstate Petitioner's parental rights.

## REPLY TO RESPONDENT'S ARGUMENT

The primary Question Presented (restated) before this Court remains: May a state appellate court deny review of a superior court order, issued *sua sponte*, that indefinitely suspends the fundamental and protected liberty interests of the care, companionship, and society of the parent-child-family relationship where that court action was based upon solely the *sua sponte* (state-initiated) use of a state court's wide discretionary powers without allowing a review (substantive and procedurally due process) under the heightened scrutiny of the "clear, cogent, and

convincing standard" required by the United States Constitution?

1. The May 19, 1997 Order on Family Law Motion and all subsequent orders of the Washington courts in this case suspend the parent-child-family liberty interests indefinitely. The May 19, 1997 order and all subsequent orders modify the 1995 Parenting Plan Order by suspending the father-child residential schedule and by denying the Petitioner's right to modify the 1995 Parenting Plan Order. These modifications were ordered without request of the parties and without the court meeting the required clear, cogent, and convincing burden of proof.

Because the Parenting Plan Final Order has no provisions that would allow either the guardian ad litem (GAL) or the court to summarily alter the plan except to increase Petitioner residential time with his son, suspension of parental rights and refusal to modify father's schedule are *per se* modifications. The 1995 Parenting Plan Final Order allows only "alterations" increasing father's residential time upon a finding of father satisfactory progresses in Anger Management Therapy (AMT). *May v. Douglass*, Parenting Plan Final Order, Court No. 94-04567-2 (Sept 19, 1995, unpublished)/Petition for Writ of Certiorari, Appendix A-24 – A-40. Petitioner completed AMT in August 2000.

The original court expressly relies on the *In Re Marriage of Lilly* case to deny Petitioner's modification based upon apparently finding Petitioner intransigent concerning the appointment of and use of the GAL. *Douglass and May*, Order on Family Law Motion, Washington Superior Court Nos. 94-3-04567-2 SEA/94-5-03704-9 SEA (May 19, 1997, unpublished) Petition for Writ of Certiorari, Appendix p. A-21-A-23; *see In Re Marriage of Lilly*, 75 Wash.App. 715, 880

P.2d 40 (1994). It then appears that court implicitly relied upon the *Kirshenbaum v. Kirshenbaum* case, *inter alia*, to find it had the authority to suspend Petitioner's parental rights apparently based upon that court's erroneous belief the GAL was required for Petitioner to maintain his parental rights. *See generally Kirshenbaum v. Kirshenbaum*, 84 Wash.App. 778, 929 P.2d 1204 (1997)

Unlike the parenting plan in the *Kirshenbaum* case, the parenting plan in the instant case provided no implied or expressed means to "alter" it except to allow for increases in father parenting time and allow modifications based upon the parties' major residential changes. *See generally May v. Douglass*, Parenting Plan Final Order *supra* at Petition for Writ of Certiorari, Appendix A-24 – A-40. Respondent errs to suggest the suspension of parent-child-family liberty interests is not a modification of the Parenting Plan Final Order.

2. The contempt of court finding is not the issue in this case. That finding is not the basis for the indefinite suspension of Petitioner's parental rights. Washington statute requires two findings of contempt within three years before it may suspend a parent's liberty interest in the upbringing of his child.

> RCW 26.09.260(2)(d):
> (2) In applying these standards, the court shall retain the residential schedule established by the decree or parenting plan unless:
> (d) The court has found the nonmoving parent in contempt of court at least twice within three years because the parent failed to comply with the residential time provisions in the court-ordered parenting plan, or the parent has been convicted of

custodial interference in the first or second degree under RCW 9A.40.060 or 9A.40.070.

There was only one finding of contempt of court in the entire case. Should the original court have relied upon contempt to issue its suspension of parental rights order, it would have violated Washington law and the protections provided by the 14th Amendment.

"Custody and visitation privileges are not to be used to penalize or reward parents for their conduct." *Marriage of Cabalquinto*, 100 Wash.2d 235, 329, 669 p.2d 886 (1983), *Schuster v. Schuster*, 90 Wash.2d 626, 585 P.2d 130, 131 (1978), *Andersen v. Andersen*, 75 Wash.2d 779, 781, 453 P.2d 856 (1969), *Mailfait v. Mailfait*, 54 Wash.2d 413, 418, 341 P.2d 154 (1959).

Under contempt of court and under "high conflict" case theory, Washington courts may not suspend the Petitioner's parental rights without meeting the heightened "clear, cogent, and convincing" evidence standard scrutiny. Before a Washington court may deprive a natural parent of the care, custody, and control of his minor child, the facts supporting such deprivation must 'clearly show the welfare of the child will be substantially subserved by such action.' *In the Welfare of Sego*, 82 Wash.2d 736, 738, 513 P.2d 831 (1973). To deprive a natural parent of the care, control, and custody of his minor child, the court must meet (1) standard of proof that is clear cogent and convincing to support such an order and (2) there must be substantial evidence to support the court's order. *See Id.* at 738-739.

"In a parental rights termination proceedings, the private interest affect is commanding; the risk of error from using a preponderance standard is substantial; and the countervailing governmental interest favoring the standard is comparatively light. Evaluation of the *Eldridge* factors compels the conclusion that the use of

a "fair preponderance of evidence" standard in such proceedings is inconsistent with due process. *Santosky v. Kramer*, 455 U.S. 745, 759, 102 S.Ct. 1388, 1398, 71 L.Ed.2d 599; *see Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S.Ct. 893, 903, 47 L.Ed.2d 18 (1976).

If contempt of court were the issue, Petitioner's ability to cure the May 19, 1997 order now is impossible. The cure conditions were harshened and modified on January 28, 2000, February 25, 2000, June 2000, November 14, 2000 and February 27, 2001. Each modification subsequent to August 1997 changed a condition to cure the suspension sanction without a good cause hearing and without meeting the required burden of proof to continue to enforce termination of Petitioner's parental rights.

In this case, the original court suspended parental rights using its wide discretionary powers without using the required heightened substantial evidence standard required for Due Process by the United States Constitution before parental rights can be terminated for *any period of time*. Contrary to the Respondent's allegations and implications, there existed no exigent circumstances and no exigent child safety that would allow use of discretionary powers.

3. Washington Courts have absolutely no basis to suspend Petitioner's parental rights; and absolutely no basis to deprive parent-child-family of their protected liberty interests. Washington courts did not meet the heightened standard of proof to order suspension of Petitioner's liberty interest. The court's use of its wide discretionary powers without meeting the clear cogent and convincing standard to support such an order and without substantial evidence to support the court's order violates the heightened due process protections of the 14th Amendment. U.S.C. Const.Amend. 14. The

appellate courts' refusal to take review impermissible sanctions the Due Process Clause violations.

4. Petitioner's Motion for Discretionary Review by the Washington Court of Appeals of the May 19, 1997 order founded upon the denial of review and denial parental rights reinstatement via the November 14, 2000 order is proper. The superior court's actions met the standards for review under Washington Rules for Appellate Procedures (RAP) 2.2 and 2.3. As the November 14, 2000 superior court "committed an obvious error which renders further proceedings useless," Washington appellate courts may take review of the case. RAP 2.3(b)(1). When superior court continued termination of Petitioner's parental rights without allowing a hearing and then ordered the May 19, 1997 order modified *sua sponte* without hearing, it clearly failed to comport with proper judicial procedures. That court failed to meet the heightened burden of proof required of due process for the continued termination of Petitioner's parental rights. As that November 14, 2000 court commanded, without hearing and without full review, the sixth modification of the *ultra vires* May 19, 1997 order based upon *res judicata*, that court improperly denies Petitioner and his children protected family liberty interests. Such action implies any further proceedings are useless. RAP 2.3(b)(1) allows appellate review. That court substantially limited the freedom of Petitioner and his children by denying reinstatement of parental-family rights and by refusing judicial review before implementing harsher conditions to cure suspension. RAP 2.3(b)(2). Parental rights termination hearing requires a heightened evidence scrutiny and clear, cogent, and convincing" good cause. Superior court "so far departed from the accepted and usual course of judicial proceedings, as to call for review by appellate court." RAP 2.3(b)(3). The Petitioner has never been

afforded a proper hearing on the matters of the termination of his parental rights and termination of his children family rights. This is clear and probable error by superior court. Appellate review is again mandated under RAP 2.3(b)(2). Based upon November 14, 2000 court action, this case met RAP requirements for discretionary and direct appellate review.

5. Petitioner's Motion for Discretionary Review by the Washington Supreme Court of the May 19, 1997 order has the same requirements for the Court of Appeals. *Supra* paragraph 4 above.

6. This case is within the jurisdiction of this Court. The issues before the Court involve fundamental liberty rights of family, which are protected by the United States Constitution. The constitutional issues were timely raised in all Washington forums. Washington courts, relying on its relevant case law improperly and inappropriately uses (abuses) its wide discretionary powers in family law matters to suspend parental-child-family liberty interests without allowing parties the heightened scrutiny required by the United States Constitution. *Supra* paragraphs 1 and 2 above.

## SUMMARY AND CONCLUSION

The essential issue before this Court remains the protected, fundamental liberty interests of the parent and his child and their family should not and cannot be properly terminated for any length of time by state court-initiated action, unless that state court based such termination or suspension upon proper procedural and substantive due process and "clear, cogent, and convincing" evidence among other heightened protection requirements. In this case, the state court did not have any substantial basis for

suspension and could not make a proper finding to suspend or terminate the fundamental rights to family and society between the Petitioner and his youngest child and their family. The state court did not meet the burden necessary to deprive Petitioner, his youngest child, and their family of care, custody, and companionship of one another.

The original *sua sponte* action to suspend Petitioner's parental-child rights remains beyond the authority of the family law department of that superior court. All subsequent court actions fail to meet the required heightened standard of required by the United States Constitution of "clear, cogent, and convincing" evidence to sustain the indefinite suspension of parent's and child's liberty interests.

Where Washington Courts do not have the authority and right to deprive a parent and his child of fundamental liberty interests, the failure of the Washington appellate courts to take review further undermines the protection of the fundamental and heightened liberty interests involved here.

The Washington Court of Appeals and the Washington Supreme Court refused to allow discretionary review of the *ultra vires* superior order that effectively, indefinitely deprives Petitioner, his youngest child, and their family of in violation of the Due Process Clause of 14th Amendment. Those decisions sanctify actions that stand in conflict with decisions entered by the United States Supreme Court.

Washington appellate courts do not have the discretion not to review matters concerning the parental rights of Petitioner where its lower courts indefinitely suspended said rights without good cause, without basis, and without meeting the heightened scrutiny required by the United State Constitution and the United States Supreme Court.

No. 01-1009

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2001

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Robert May,
*Petitioner*

v.

Desiree Douglass,
*Respondent*

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On Motion For Discretionary Review
To The Supreme Court of the State of Washington

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# APPENDIX TO REPLY TO BRIEF IN OPPOSITION

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*Petitioner Pro Se*

## TABLE OF APPENDICES

*Court /Date* *Pages*
*(TITLE OF ORDER)*

Narrative of Hearing of May 19, 1997 Before
Commissioner Kimberly Prochnau ..... A60 -A85

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR KING COUNTY

| | |
|---|---|
| In Re Parenting Plan for Dominick May-Douglass | ) |
| | ) |
| ROBERT JOSEPH MAY, Petitioner | ) NO. 94-5-03704-9 SEA |
| | ) |
| | ) NARRATIVE OF |
| vs. | ) HEARING OF MAY 19, |
| | ) 1997 BEFORE |
| DESIREE LUANA DOUGLASS | ) COMMISSIONER |
| Respondent | )KIMBERLY PROCHAU |

## INTRODUCTION AND BACKGROUND

This Narrative presents a record of parties' hearing before Family Law Court Commissioner Kimberly D. Prochnau held on May 19, 1997. It is presented without the concurrence of respondent Douglass. It is presented as evidence and as a record of the hearing. Reference is made to this case's Appearance Docket (AD) and its Sub # and to case number 94-3-04567-2 Appearance Docket (AD 41 - Case 94-3-04567-2) throughout this narrative. For example, 12/30/1996 Petition for Modification of the Parenting Plan Order is referenced as AD 179 reflecting the case record Appearance Docket Sub #.

On May 19, 1997, Robert May (petitioner or May) and Desiree Douglass (respondent or Douglass) appeared before King County Family Law Court Commissioner Kimberly Prochnau for a scheduled adequate cause threshold hearing on May's December 30, 1996 Petition for Modification of Parent Plan. AD 179, 180.



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An adequate cause hearing was scheduled on 01/27/97 for May 19, 1997. AD 179B/Schedule of Case dated 01/27/97.

In March 1997, Douglass initiated actions for a Parenting Plan and Contempt proceedings against petitioner May. Douglass scheduled a hearing on those motions for April 28, 1997. Douglass failed to confirm the hearing and the matter was not heard. On April 28, 1997, using the previously filed documents including the failed Order to Show Cause motion, Douglass appeared before Ex Parte Court Commissioner Carlos Velategui to renew the action. The Douglass' actions were responsive action to the May's Petition for Modification of the Parenting Plan Order. AD 179. Noting petitioner's adequate cause threshold hearing was already scheduled for May 19, 1997, Commissioner Velategui set Douglass' two motions for May 19, 1997.

A hearing was held before Commissioner Kimberly Prochnau on May 19, 1997. Commissioner Prochnau allowed the parties 15 minutes and heard two Motions for Contempt (one by each party), Motion for Amended Protection Order (filed untimely by Douglass), Adequate Cause Showing (filed untimely by Douglass), Motion for Modify Parent Plan (filed untimely by Douglass), Motion to Dismiss GAL (Douglass), Motion to Appoint GAL (Douglass), Motion for Temporary Parent Plan (May), and Motion to Dismiss GAL (May).

Both parties' petitions for a finding of an adequate cause threshold were denied and the case was dismissed by Commissioner Prochnau. Petitioner May was found to be in contempt of court for failing to comply with the Parent Plan Order in the case. His residential schedule with his son Dominick was



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suspended pending the payment of GAL Caroline Davis $ 1800.00 and documented progress in Anger Management Therapy. *see* AD /Order on Family Law Motion dated March 19, 1997. The order was affirmed upon a motion of revision on June 20, 1997. The Superior Court refused to hear and denied May's Motion for a Stay pending the outcome of the appellate courts. AD 236A and AD 236B.

After the Notices of Appeal were filed in Court of Appeals, District 1 and served upon Superior Court and Douglass, Douglass moved the Family Law Court for an order modifying the Parenting Plan Order on the same basis that was denied on May 19, 1997 by Commissioner Prochnau and affirmed by Judge Sharon Armstrong.

On August 4, 1997, without a good cause showing or the best interest of the child showing, but based largely on the suspension of May's parenting plan residential schedule, Family Law Court modified the Parenting Plan Order by issuing an order allowing Douglass to move from the State of Washington to the State of California. *see* AD 220 /Order on Family Law Motion dated August 4, 1997. King County Superior Court Judge Joan DuBuque sitting in Family Law Court modified the law of the case and all trial court orders without the benefit of a trial or an Adequate Cause hearing pursuant to KCLR 94.04 and overruled the Order on Family Law Motion of May 19, 1997 affirmed June 20, 1997. Judge DuBuque refused to rule on May's motion to vacate contempt expressly stating that Family Law Court did not have the jurisdiction to overturn Judge Armstrong's decision affirming the Family Law Order.



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## II. NARRATIVE REPORT OF HEARING OF MAY 19, 1997 BEFORE COMMISSIONER KIMBERLY D. PROCHNAU

2.1 Commissioner Prochnau opened the proceeding by stating to both parties that each had only fifteen (15) minutes to argue and respond to the matters before the court. May objected on the basis that pursuant to KCLR 94.04 he had asked the court for two hours to argue all the matters and had properly noted the request before Family Law Court administration. Commissioner Prochnau overruled the objection stating that the given time limit was adequate.

May renewed his objection stating the matter originally scheduled before the court was the Adequate Cause Threshold hearing for his properly noticed and scheduled Petition to Modify the Parent Plan Order. May noted that the issues of child custody and the residential schedule were of paramount importance and could not be successfully argued in fifteen minutes if he were to have to oppose Douglass' six motions place of calendar on April 28, 1997. May argued that the contempt proceedings had possible criminal sanctions, properly required criminal defense counsel appointment, that allowing only fifteen minutes to defend against contempt and oppose other motions while showing adequate and good cause for a trial on the matter of a new Parent Plan Order violated substantive due process protections of the state and federal constitutions.

Again, Commissioner Prochnau overruled May's objection stating the court would only allow fifteen minutes for all matters, arguments, responses, and rebuttal.



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May began his arguments.

2.2 The Matter of Adequate Cause for May's Petition to Modify Parent Plan Order. First, May argued that there was adequate cause for modification of the Parent Plan Order based upon his residential move to Oregon for employment. His move made the residential schedule impractical. Pursuant to RCW 26.09.060(4), there is a "substantial change in circumstances of either parent or of the child, without consideration of factors set forth in section (2), if the proposed modification is only a: (b) Minor modification in the residential schedule that... that make the residential schedule in the parent plan impractical to follow." May's move to Oregon for employment meets this requirement. It is impractical and financially impossible, at this time, for May to receive the residential time granted him due to his work hours and the distance he had to travel to take his residential time. The basis for a minor modification only requires a change of circumstances of either parent when the residential schedule becomes impractical. The father's move to Oregon for employment and his current work schedule make the residential schedule impractical to follow. The impracticality of the residential schedule gives the court an adequate cause threshold to modify the Parent Plan Order.

Second, May argued that there was adequate cause and good basis for a trial to modify the Parent Plan Order because the Parent Plan Order was void. May argued the Parent Plan Order was void for the following reasons:

There was no proper presentation of 1995 trial court



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orders and the findings of fact in violation of SuCR 52 and SuCR 54. Pursuant to Washington case law, a violation of court rules and procedures that results in a harmful error to the party or parties shall make court orders void. SuCR 60(b)-(d)

The Parent Plan Order was issued under Case Number 94-3-04567-2 on September 19, 1995, whereas all other orders were issued under Case Number 94-5-03704-9. May argued the court effectively severed the cases upon establishing the Parent Plan Order. There was no Findings of Fact to support the Parent Plan Order under its case number. Paternity was not established in that case and therefore the Parent Plan Order is unlawful. Paternity was established on September 27, 1995, nine (9) days after the Parent Plan Order was issued in the Judgment and the Order Establishing Paternity and Other Relief under Case Number 94-5-03704-9.

May argued that Judgment and Order is void on its face. The court knowingly issued Judgment and Order after using opposing party's Ex Parte correspondence to establish child support and a money judgment. The determinative use by the court of the Ex Parte correspondence concerning a financial accounting of opposing party without allowing response and rebuttal by May remained a violation of "due process clause of the constitution." RCWA Const. Art. 1, sec. 3. Use of the Ex Parte correspondence violates court rules, the Code of Judicial Conduct, and Rules of Professional Responsibility. A judgment entered in a proceeding not comporting with procedural due process is void. RCWA Const. Art.1, sec. 3. May cited In Re Marriage of Ebbighausen, 708 P.2d 1220, 42 Wash.App. 99 (1978) and reminded the court of appeals ruled that the "procedural elements of state constitutional



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guarantee of due process are noticed and the opportunity to be heard and defend before a competent tribunal in an orderly proceeding adapted to nature of the case." The establishment of that Judgment and Order, a money judgment, based upon an ex parte correspondence between the opposing counsel and the court violates due process protections and court process and procedure protections. May argued he was not given any opportunity to respond to or correct the opposing party's erroneous information and testimony provided by ex parte correspondence. Since the court used that correspondence to establish the Judgment and Order to grant other such relief including child support vexing the rights of May, the Judgment and Order is void. Consequently, pursuant to SuCR 60, the dependent Parent Plan Order that is notably filed under a different case number is also void and unenforceable.

Accordingly, these arguments present a threshold for adequate cause of a substantial change of circumstance and give good and adequate cause for a trial on the matter pursuant to RCW 26.09.260.

Continuing his arguments on the voidability or voidness of the 1995 trial court orders, petitioner May pointed out that the terms of the Parent Plan Order and the Order Appointing the Guardian ad litem are in conflict. The terms of the conflict in the law of the case are such that it ought to have required the trial court to correct the errors. Specifically, the period of appointment for the guardian ad litem is different between the two court orders. Further, the Parent Plan Order is subjunctive and ambiguous with regards to the terms for increased residential with the father and anger management recommendations. The Parent Plan Order is too vague and too ambiguous to be valid.



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May continued this line of argument with his continuing objection to a guardian ad litem. May argued that the designation of a guardian ad litem after the trial, without good cause or a finding of fact to support such an appointment is unconstitutional. It is a violation of Washington State law (in this case, under Washington law, a guardian ad litem may only be appointed for the term of the court proceeding; and there must be a finding of fact to support the appointment . . . such a finding must support an action that must balance constitutional protections must be in the best interest of the child) and violations of the 14th Amendment of the U.S. Constitution for among other reasons it is an undue intrusion by the government into the private lives of citizens (violation of the right to privacy) and the costs were levied without proper due process (deprivation of liberty and property without due process).

Third, May argued that there was a substantial change of circumstances pursuant to RCW 26.09.260 and therefore further good and adequate cause threshold to proceed to trial or negotiated settlement. Pursuant to RCW 26.09.260, if there is "the basis of facts . . . that were unknown to the court at the time or the decree or plan, that a substantial change has occurred in the circumstances . . . of the non-moving party and the modification is in the best interest of the child and is necessary to serve the best interests of the child." The resignation of the court appointed guardian ad litem, Don Layton due to his ongoing conflict of interest, is in part, the basis for the "substantial change." The court relied heavily on the judgment, opinion, and report of Don Layton in this matter. Further, the court, based in part on the recommendation of Don Layton, ordered his



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appointment until Dominick obtained age twelve. It is Layton's conclusion that provided the court with the restrictions it imposed based upon "abusive use of intimidation." Unbeknownst to the court and to the petitioner, Don Layton had a conflict of interest and should and should have never been appointed to the case. By court order, Layton was expressly made a party to the case. His resignation removed a court party that was required to carry out the trial court orders and therefore there was a substantial change of circumstances. When Don Layton discovered and knew he had a conflict of interest, he should have resigned. Layton knew he had a conflict of interest at the time his investigation began. Layton knew he had a conflict of interest before the trial proceedings. He failed to disclose that conflict to the court and to the parties. He failed to disclose that he is the DSHS Child Protective Services Supervisor for the area in which the parties resided. That conflict certainly impacted his approach to the case. It impacted his findings. May emphasized the revelation that Layton had an ongoing conflict of interest impacted his presentation before the trial court. It affected the court. It harmfully affected the outcome of the trial.

Due to the conflict of interest between his official state duties, the State of Washington demanded Layton's resignation from the instant case. The effects of Layton's appointment and resignation have created considerable harm to the case. Don Layton's involvement in this case has resulted in a harmful error by the court in deciding this matter. It is on the basis of Don Layton's appointment and then post-litigation resignation that a substantial change has occurred. Layton was effectively a "party" to the entire paternity and parent plan proceeding. His testimony and his report heavily influenced the court in this



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matter. His input and services cannot be substituted without further prejudicing the case. Layton's resignation must be considered a substantial change of circumstances relative to the child and the custodial parent. Because of Layton's overall impact on deciding the case and the current impact that now includes the Family Court's decision concerning Contempt of Court, Layton's resignation provides an adequate threshold.

May argued citing Timmons v. Timmons, 617 P. 2d 1032, 94 Wash.2d 594 (1980) and court rules that a custody decree may be modified on the basis of facts unknown to the court at the time of decree to moderate *res judicata*, whether or not the decree has been contested, due to public interest in the welfare of the children. In accordance with SuCR 60 (b), subsections (1) through (6), the Parent Plan Order may be vacated. Layton's conflict of interest was unknown to the court and the parties prior to and at the time of the decree. Layton's resignation and dismissal by the court is a substantial change of circumstances affecting the child and both parties. The court made Layton an integral part of this matter.

2.3 The Matter of Contempt of Court Against May. May argued that he was not in Contempt of Court because he did not manifest the intent to violate a court order and that the parties had reached an informal, verbal agreement regarding Dominick's stay with May in Oregon for one extra day. Further May asserted that the extra day was a make-up day for days loss due to Douglass' court sanctioned January 1997 thirty day Hawaiian vacation and her February 1997 California business trip which pre-empted Dominick's residential schedule visit with petitioner May. May further asserted that the residential schedule was impractical and that Douglass refused to



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negotiate a new residential schedule. May advised the court he had missed a day that was not made up due to Douglass' three week vacation in January 1997, and that Douglass' business trip violated the Parent Plan Order and caused the loss of a partial day. May asserted and showed that May maintained custody of Dominick an extra day without intent to deprive Douglass of custody, without the intent to interfere with custody and without the intent to show contempt of court.

2.4 The Matter of the Guardian ad Litem. May argued that pursuant to Washington case law, a guardian ad litem is a special guardian, appointed by the court to prosecute or defend, on behalf of an infant, or to represent an unborn person in pending litigation. As a special guardian, the guardian ad litem's duties are limited in scope. He or she has no powers or duties to appointment or after the case has been terminated. May cited North American Council on Adoptable Children v. Department of Social and Health Services, 739 P.2d 677, 108 Wash. 2d 433 (1987). By definition, a guardian ad litem is a special guardian appointed for the limited scope of representing the child in the matter until litigation terminates.

The guardian ad litem, such as attorney Ms. Caroline D. Davis cannot be employed for management case. The guardian ad litem's limited scope and limited term duties go to protect the best interest of the child before the court and before tribunal hearings. He or she has no powers or duties prior to appointment or after the case has been terminated. May again cited North American Council on Adoptable Children (NACAC) v. Department of Social and Health Services, 739 P.2d 677, 108 Wash.2d 433 (1987).



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May argued that in the instant case the guardian ad litem is not a guardian of a dependent or incompetent. In this instance, the child has two parents quite capable of properly and appropriately taking care of the child. Dominick is not a dependent child of the court or the state. The child's welfare and protection are not an issue. There is not finding of fact or actual fact to give the court discretion to appoint a guardian ad litem for Dominick until he obtains the age of twelve or the age of majority depending upon which 1995 trial court order is read. The guardian ad litem, Don Layton, who was not an expert witness and yet who was the architect for the Order Appointing Guardian ad litem was dismissed for an ongoing "conflict of interest" concerning this case and his State employee duties. May argued that although Washington case law grants the court "broad discretion" in child welfare matters it does not grant the court privilege to directly interfere in the constitutionally guaranteed right to privacy without good cause or a balancing of constitutional rights. May cited In re Marriage of Sheley, 895 P.2d 850 (1995), Marriage of Cabalquinto, 669 P.2d 886, 100 Wash.2d 324 (1983); Schuster v. Schuster, 585 P.2d 130, 90 Wash.2d 626, 632 (1978); Joslin v. Joslin, 274 P.2d 847, 45 Wash.2d 357, 364 (1954). Though trial courts are given broad discretion in matters concerning the welfare of children, the continuing appointment of the guardian ad litem is without foundation, unconstitutional and that order is void on its face for violation of both the state and U.S. Constitutions. May argued even allowing the "broad discretion" the court may take in matters regarding the welfare of children, the court has no reasonable grounds or tenable reasons to order a guardian ad litem be attached to this case for over nine years. There are no findings of fact, facts of law, or facts at



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issue that gives the court any discretion to order the appointment of a guardian ad litem for any period beyond the term of the trial. There are no special conditions or emotionally disturbed children involved in the case. The trial in this case ended in September 1995. The limited purpose of the special guardian terminated at that point. The law is clear on the matter of the appointment of guardians and guardians ad litem and their terms. The court does not have the discretionary power, in this case, to legislate new law. The restriction placed in the Parent Plan Order of this case is not enough to overcome the law. The protection and welfare of the child is not at stake. The court has no basis in fact, law, or on its Findings of Fact to impose itself in the lives of the parties post-trial unless the parties come before the court.

May argued that the restriction placed in the parent Plan Order at paragraph 2.2, pursuant to RCW 26.09.191 (3) that states "a. The father's conduct may have an adverse effect on the child's best interests because of the existence of the factors which follows. (1) The abusive use of conflict and intimidation by the parent which creates the danger of serious damage to the child's psychological development. This factor serves as a current basis for restrictions with respect to decision making and dispute resolution and serve to limit the frequency of exchanges of residential care" was without merit and allowed by mistake of trial court. May pointed out there is no basis under RCW 26.09.191 (3) for this restriction and there is no finding of fact to support this restriction. The Findings of Fact and Conclusions of Law in this case may be summarized as the father "is not accepting the [mother's] position that the relationship is over. Restraints and no contact are necessary until the father is able to address these issues in anger



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management" related to issues with the mother and not the children. May argued that Finding of Fact, as proposed by the opposing counsel is mitigated by the fact the mother also did not accept the position the relationship was over as evidenced in post-trial circumstances. It had no foundation considering the contentiousness of the parties. May argued that Finding of Fact does not meet any element of RCW 26.09.191 including RCW 26.09.191 (3) (e). Nothing in the Finding of Fact or presented in trial supports the contention that "there exists or existed the abusive use of conflict by the parent which creates the serious danger to the child's psychological development." Statements in the court adopted July 1995 GAL Report expressly stated otherwise.

May noted that during the trial in this matter, the court and the guardian ad litem both focused on the mother with regard to the use of "abusive intimidation." The "protection of the child was not and has never been the issue." Don Layton, the guardian ad litem through December 30, 1996, stated in his report to the court dated July 2, 1995 and during trial that the mother is incapable of keeping boundaries with regard to the father and therefore needs the assistance of the court. Don Layton recommended to the court during trial he be appointed the guardian ad litem to maintain this boundary. The court concurred. Over the adamant objections of the father and based upon its discretion, the court appointed Don Layton guardian ad litem. Don Layton's appointment was to last until Dominick obtained the age of twelve or the age of majority, depending upon which trial court order is read. The Findings of Fact support the assertion that the guardian ad litem was appointed to "protect" the mother, apparently from herself. In no way does that directly reflect on the welfare nor the



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psychological development of the child or any child in this case as there are six other children involved in this matter.

May argued the guardian ad litem should not have been continued after the case terminated on that basis or any other basis except dependency or incompetency. There is not basis for the continuation of the guardian ad litem. In this case, Don Layton stated in open court that he was biased in favor of the mother. Layton stated he intentionally slanted his report to the court to ensure the father stood no chance of receiving custody. His stated bias demanded that the court could not have envisioned the guardian ad litem to be an arbitrator between the parties or a case manager. The guardian ad litem was appointed to "protect the mother" and ensure the recommendations of the court with regards to the father were overseen. May argued it is not up to the court to legislate or interfere in the private affairs of family after trial. The court must show a basis in law to insert itself into the family once a case has terminated. This is a Constitutional guarantee and right that should not be trampled upon by some vague or omnipotent concept named "the discretion of the court." The reason for the discretion must be stated clearly and strongly backed by case law. In this case, the "discretion of the court" is an abuse of judicial power. The court does not have a basis for discretion in this case. Considering the resignation and dismissal of the "architect" of this intrusion into private lives, the court ought to reconsider its judgment and rulings on the subject. Its Order Appointing Guardian ad Litem is untenable considering the facts and mounting facts of this case, is based upon reasonable and unclearly stated



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grounds, and violates, without balancing interests, Constitutional protections.

2.5 Opposition to Appointment of Caroline Davis as GAL. May argued that the appointment of Caroline D. Davis under Case Number 94-5-03704-9 is improper. Davis was appointed by Superior Court Judge Charles Johnson acting as Judge in Family Law Court. May argued that Family Law Court did not have jurisdiction over the guardian ad litem matter. The matter came before the Family Law Court in an earlier Contempt of Court action. It was improperly before the court in December 1996. That 1996 action of the court modified the 1995 trial court order in contravention of court procedure and process. May argued that the appointment of a GAL is under the jurisdiction of Superior Court as the order was signed by Superior Court Judge Sharon S. Armstrong. Though May objected to the Family Law Court (Judge Charles Johnson) deciding a matter without a proper summons and notice, Judge Johnson pointed out that he was a Superior Court Judge and could make such GAL appointments. Whether or not Judge Johnson could make such an appointment, under the circumstances is moot, he made the appointment. The appointment was made without presentation and the appointment process did not comport with court procedures. May argued that the 1996 appointment order was void on its face for failure of process and because it violated the law of the case and the doctrine of *res judicata*. Further, the action was, as Judge Johnson phrased it, a substitution of GALs and not a modification of the original court order failed for process and procedure. Judge Johnson's order, like Judge Armstrong's original order is void for failure of process, failure to comport with court procedures, and it violates both the state and the U.S. Constitutions.



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May cited to Esmieu v. Schrag, 548 P.2d 581, 15 Wash.App. 260 (1976) and Ebbighausen to support his argument and support his argument that there was adequate cause threshold.

2.6 Conflicting Orders and GAL Fees. May argued that Davis was one of the most expensive GAL's in the practice in Seattle and her fees exceeded the fees allowed by the trial court orders. May argued that *res judicata* did not allow the imposition of fees greater that $ 400.00. In the alternative, May again argued The Judgment and Order Determining Parentage and Granting Additional Relief was void on its face for failure of due process, failure to comport with court procedures, and failure of presentation, defines the "Future fees and costs" of the GAL. The order states, "Prior to any additional work being done by the guardian ad litem being done, each party shall pay an advance retainer of $200.00 a piece to be credit towards work done." The newly appointed GAL's advance retainer fee is $900.00 a piece. This well beyond the terms of the Superior Court Order and *res judicata* did not allow a change without further trial and a showing that moderation of *res judicata* ought to be allowed. That order had not been modified or amended. For Family Law Court to impose an order that the Petitioner pay $1800.00 is beyond the scope and jurisdiction of Family Law Court, particularly considering the current order. As that fee is not part of the trial court order, it is improper as a remedial sanction upon a contempt finding against May.

May continued to assert Caroline D. Davis does not have any responsibility under the current Parent Plan Order as GAL. May rightly observed no GAL has ever been appointed to the case. The Parent Plan Order is under the case number 94-3-04567-2. Judge Sharon



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Armstrong issued the orders under both cases in September 1995. May renewed his argument that the court effectively severed the cases again on September 19, 1995, after trial. The 1995 trial court granted Robert May, under the case he initiated to establish a parent plan, the two provisions he requested, a Parent Plan Order under the case he initiated and a guarantee that he shall always have a practical residential schedule with his son Dominick. The Parent Plan Order under case number 94-3-04567-2 was drafted and presented by opposing party to May. A guardian ad litem is appointed under case number 94-5-03704-9.

2.7 May's opposition Douglass' Motion for Amended Protection Order, Adequate Cause Showing, and Motion for Parent Plan Order. May argued all were improperly before the court and the Douglass had no legal basis to be granted any of the relief she requested.

2.8 May's argument for Contempt against Douglass. May argued the following:

Douglass was not on a business trip within the scope and meaning of the Parent Plan Order. The trip was a voluntary junket paid for by Douglass. The trip allowed her to visit her mother and job shop. The business trip was over prior to the commencement of May's residential schedule and that Douglass had adequate time to meet the Parent Plan Order commitment. Instead, she elected to stay in California and visit her mother at Pismo Beach (not on business) during the Saturday of May's scheduled residential time. May argued that Douglas failed to meet the requirement of the Parent Plan Order to give a timely 10-day notice prior to going on a business



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trip. May noted that the failure to give notice and the visit to her mother on Saturday when the business trip ended the prior Friday was intentional contempt of court.
Those violations in conjunction with Douglass' failure to negotiate a new residential schedule due to May's move to Oregon for employment, and Douglass' intentional and continuous frustration of the residential schedule showed contempt of court.

2.9 Douglass argues Contempt against May.
Douglass stated May kept Dominick until Sunday in violation of the Parent Plan Order. She provided evidence in support of the contention of a Seattle Police Department Report she initiated, a Tigard (Oregon) Police Department Report she initiated, and a report from Common Ground. She stated though May contacted her regarding the extended stay of Dominick in Oregon, she denied her agreement. She stated she did not communicate directly with May on the matter. Douglass stated that May made contact through letters and through Common Ground. Douglass stated that when she took Dominick to the train station with his brother Robert Michael May that she was aware that May did not intend to bring Dominick back on Saturday. Even so, she argued that she felt threatened that May would kidnap Dominick. Douglass testified regarding an alleged kidnapping by May of his son Albert and attempted to introduce evidence of an Oregon dissolution.

May objected on the basis that the evidence and testimony was hearsay. The court sustained the objection and struck the evidence. Douglass continued that she was afraid May would not return Dominick. May objected to the characterization and the testimony.



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May objected based upon foundation and no substantiating circumstances. May stated no threat was made written, or uttered to unlawfully take Dominick out of the State of Washington. That he was in constant communication and there was no basis for such an allegation. That he had other children and employment in Oregon and was not about to flee with Dominick.

The court overruled stating the argument went to Douglass' "state of mind."

Douglass argued May was in contempt of court for failing to meet the requirement of anger management counseling suggested by the trial court. Douglass spoke of a telephone conversation she allegedly had with Dr. Ganley. Douglass introduced a letter from Dr. Ganley of the Veteran's Administration.

May objected to the introduction of the telephone conversation and the letter on the basis of foundation and relevancy. The matter before the court was contempt for failure to return Dominick per the Parent Plan Order.

The court overruled that objection.

May renewed the objection on the basis of hearsay.

The court again overruled the objection, stating the letter was sufficient evidence.

May renewed the objection on the basis that the letter was in fact untrue and mis-characterized the situation. That he did not have prior notice of the letter and could not properly rebut the evidence. The



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letter and the concomitant telephone conversation were unsubstantiated hearsay. Neither evidence was an affidavit nor a declaration allowed by the court.

The court overruled the objection stating, in essence, the letter was sufficient "indicia of reliability."

Douglass testified that May refused to follow the requirements to use the intermediary service, Common Ground. She provided evidence in the form of letters from Common Ground.

May objected to the testimony and the evidence on the basis of foundation and relevancy.

The objection was ignored and not addressed.

May objected to the introduction of the letters from Common Ground as unsubstantiated hearsay.

The court overruled the objection.

2.10 Douglass argues Amended Protection, Adequate Cause, and Motion for Parent Plan. Douglass argued that May's move and her feelings that her would kidnap Dominick required heightened Protection Order and a Modification of the Parent Plan Order severely restricting May's residential schedule. Douglass argued she feared that there was not adequate adult supervision at May's home.

May objected on the basis of hearsay. The court ignored May's objection to the testimony and allowed Douglass to continue.

Douglass offered testimony about May's alleged involvement with Child Protective Services and offered



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a letter from Don Layton to substantiate her testimony.

May objected on the basis of relevancy and hearsay. The disclosure by Don Layton of any activity by CPS is a violation of the law. May argued the report to CPS was disregarded as untrue citing ER 403, ER 802.ER 402. That the report was made by Douglass a self-serving false evidence.

Again, the court ignored May's objection and allowed Douglass to continue.

2.11 Court intervention on Douglass behalf. At the end of Douglass' fifteen minutes, the court noted that Douglass had not defended against the allegations of Contempt against her. The court allowed her another minute to plead her case.

2.12 Douglass defending against Contempt of Court. Douglass stated that she did not have time to prepare a defense. She stated she had only received notice the previous Tuesday.

2.13 Court's immediate response to Douglass' defense against Contempt. Court questioned May as to if he sought an order to show cause hearing. May stated no. A hearing had been established. His motion for contempt against Douglass was both a responsive pleading to her motion for contempt and ancillary to the hearing. As proper notice was given, no Order to Show Cause Hearing was required in compliance with KCLR. The court disagreed and immediately dismissed the contempt motion against Douglass and did not allow any of the testimony regarding the matter to stand.



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2.14 The Court's findings, decisions, and order on Douglass' Motions. The court denied Douglass written motion for dismissal if Caroline D. Davis, stating Commissioner Prochnau knew Caroline Davis, but did not know Sandy Belcher. Commissioner Prochnau's knowledge of Davis was adequate cause to deny both parties' motions concerning the GAL. The court denied Douglass' Motions for Amended Protection Order, new Parent Plan Order, and Adequate Cause Showing as having no basis in law. The court found for Contempt against May. The court stated May was in contempt the Parent Plan Order by not following the provisions regarding the intermediary, Common Ground and for not complying with the residential schedule and he showed no evidence that a formal written agreement had been made. Without a written agreement, May's action were violation of the residential schedule and therefore contempt of court.

May objected to the finding and stated that the requirement for the intermediary Common Ground had expired in February 1997 and that there was therefore no basis for finding contempt for a March 1997 action that appeared not to comport with the Parent Plan Order.

The court took judicial notice and re-framed its statement saying May had frustrated the Parent Plan Order by not properly using the intermediary. The court further stated that May was not following the Order regarding anger management counseling and parenting class.

May objected stating that the purpose of the contempt hearing only had to do with one weekend and an extended stay. Further, he had completed over ten



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months of anger management training and over 60 hours in a parent class.

The court responded May would have to prove it by providing evidence of satisfactory progress to the GAL, Caroline D. Davis.

May objected to that because it was not the basis for the hearing and the continuing appointment of the GAL was improper and unlawful.

The court responded it has broad discretion in the matter.

May reminded the court it had limited jurisdiction as it was Family Law Court and a trial court order was already in place thereby making such action violative of the doctrine of *res judicata*. The appointment of Caroline Davis, considering her fees, was an improper modification of a Superior Court order, if that order was not deemed void.

The court heard and noted the objection and stated that the appointment of Caroline D. Davis would be affirmed anyway.

Again, May stated Family Law Court did not have jurisdiction in the matter.

The court found that May did not have a written letter of agreement from Douglass regarding the one-day extended stay of Dominick in Oregon and therefore found contempt on that matter.

2.15 <u>The Court's findings, decisions, and order on May's Motions</u>. The court found that May did not have adequate cause for a modification due to substantial



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change of circumstances. The court found that pursuant to SuCR 60, May had up to one year to appeal. As he did not appeal within a year, the matter was adjudicated and there was not basis to void the court orders. The court refused to address May's motion for modification of Parent Plan based upon his move and the impracticality of the residential schedule. The court stated that until May showed the court the progress through the GAL, his residential schedule would be suspended. And, until such time the progress is shown, it will not rule the "minor modification." The court ordered the Order for Schedule dismissed. The court denied the motion for the temporary parent plan. The court dismissed the Motion for Contempt against Douglass.

Commissioner Prochnau closed the proceedings.

The foregoing Narrative is presented as an accurate representation of the proceedings of the Family Law Court Hearing of May 19, 1997 in lieu of a transcript or other record as none apparently exist. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 6th day of October, 2000.

s/Robert May
Robert May
Petitioner, Pro Se



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